United States Court of Appeals

for the Second Circuit

APPENDIX

74-1157

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In The

United States Court of Appeals

For The Second Circuit

WILLIAM R. VAN GEMERT, ALBERT A. HENNING, EDWARD E. HOUCHINS, NATHAN PEARLMAN, ELIAS A. CHARIOTT, CHARLES K. DAVIS, ANDREAL HOLDING CORP., SAMUEL A. WEISS, IRWIN L. ISERT, JACK KIRSCHNER, CHARLES FRIEDMAN, H.MICHAEL ALBERS, ABRAHAM STERN, EDWARD KEMPLER, SIMEON A. SCHLOSS, JR., MARY JANE SCHLOSS SILVERMAN, SIMEON A. SCHLOSS, JR., and MARY JANE SILVERMAN, Trustees under the Last Will and Testament of Floretta Schloss Wile, DAVID M. BOTSFORD, MRS. SAMUEL LEMLER, LOUIS DAVIS, MRS. LEONARD C. DILL, JR., JOSEPH SCHLAGMAN, NATALIE K. WIGLER, ANN LOUISE DIAMOND, SAMUEL CHARDAVOYNE, WILLIAM M. JONES, MR. & MRS. H. DIENEMAN, MILTON HART, MARY LEVIN, FRANCES DAVIS, E. JULIAN DAVIS, ROBERT LEMLICH, ARTHUR FRISCH, MARIAN S. MITCHELL, VINCENTE J. BONNARD, HAROLD M. WHITE and MARGARET C.WHITE, MORRIS BERNSTEIN, WALTER L. EATON, ERNEST G. ANGEVINE, ABRAHAM PERCHICK, COMMITTEE FOR THE ESTATE OF MAX SCHNEIDER, an incompetent, FRANCIS H. SHOOBE, and ALBERT A. ARDITTI, GERTRUDE McNAUGHT, MRS. J. H. STEIN, JOAN S. BERMAN, J. DAVID STEIN, SARAH E. MORITZ, VIRGINIA W. STAUB, LOUIS BERGLAS, DR. JACK DIENER, DENNIS J. FINN, BERTHA J. WINER, JOANNE W. FINN and S. EDWARD MITTLER, for and in

(Continued)

UNITED STATES COURT OF APPEALS
FILED
SEP 6 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

behalf of themselves and for all other holders of the BOEING COMPANY 4-½% Convertible Subordinated Debentures, due July 1, 1980 who are similarly situated,

Plaintiffs-Appellants,

vs.

THE BOEING COMPANY (formerly BOEING AIRPLANE COMPANY), [redacted] CLAIRMONT L. EGTVEDT, WILLIAM M. ALLEN, EDWARD C. WELLS, JAMES E. PRINCE, LOWELL P. MICKELWAIT, W.L. CAMPBELL, ARTEMUS L. GATES, CRAWFORD H. GREENEWALT, WILLIAM G. REED, D.E. SKINNER, THOMAS R. WILCOX, JOHN O. YEASTING and GEORGE H. WEYERHAEUSER,

Defendants-Appellees.

On Appeal from Judgment of the United States District Court for the Southern District of New York.

APPELLANTS' APPENDIX

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mistakes, particularly in the field of vertical risings and short runways or runways not exceeding two thousand feet.

MR. WINER: It is stipulated in this case --

THE COURT: Please.

MR. WINER: May I open my mouth or -- nothing?

THE COURT: You are insulting and impertinent. You have opened your mouth when you shouldn't have, and when you do so you do it impertinently.

MR. WINER: I don't think so. I don't mean to be impertinent.

THE COURT: You may make any objection you wish on the record as a lawyer should.

MR. WINER: I have made an objection and I would like now to --

THE COURT: I overruled your objection and I do not take arguments on rulings on evidence. I told you that before.

MR. WINER: I would like to make a comment not on the ruling on evidence, but on the stipulation of facts in this case.

THE COURT: You may do so.

MR. WINER: That is what I am trying to do.

THE COURT: You may do so.

MR. WINER: It is stipulated in the stipulation

of facts in this case that the price was computed by taking the closing price of the New York Stock Exchange on November 13, 1959, and not by whether it was a good company for rising aircraft or not, and that is a stipulation binding on all parties, and that is what I am trying to get to with the expert.

THE COURT: You went into that yesterday or the day before yesterday.

MR. WINER: I am trying --

THE COURT: Didn't Mr. Gillespie read from the statement of facts? What number was it -- 130 or 137?

MR. GILLESPIE: With reference to what, your Honor?

THE COURT: With reference to what counsel has just said.

MR. GILLESPIE: That is correct. It is the market price, and it is Paragraph 81:

"Called at trial H. W. Haynes, who testified that the figure of 15,250,000, plus the amount to be received upon the exercise of the Vertol stock options was calculated as follows:

"The November 13, 1959 closing price on the New York Stock Exchange of 33-5/8 for Boeing capital stock was multiplied by 472,736 shares (448,954 shares being the shares

issued in connection with the acquisition of the assets of Vertol; 23,782 shares being the shares which would be issued to Vertol employees in connection with the stock option granted to them by Vertol prior to the acquisition) giving a product of $15,895,748.

"From this figure was subtracted $644,514, which was the amount Boeing would receive upon the exercise of the Vertol stock options, and that left an amount of $15,251,234, which was rounded off to $15,250,000."

THE COURT: We had that, and the president testified, and I am not sure whether the other witness, the accountant testified that by assets it included the organization and the setup and the know-how.

MR. WINER: Do you think you can find the question, Mr. Reporter, before his Honor's first question? I don't know where we left off.

THE COURT: Suppose we take a recess -now. It is ten minutes to one. How long do you gentlemen want for lunch today?

MR. GILLESPIE: We have one witness which I think will take about ten minutes, which will finish us. I don't know how much longer Mr. Winer expects to take. Up to this point I have no cross-examination.

THE COURT: I regard this witness as very

important. How long do you want for lunch?

MR. WECHSLER: Would two o'clock be all right, your Honor? It is difficult to find a place in which we can be served quickly.

THE COURT: All right.

- - -

(Trial adjourned for luncheon until 2:00 p.m.)

- - - -

AFTERNOON SESSION

(2.00 p.m.)

S A M U E L P I V A R , resumed.

THE COURT: All right, you may proceed.

DIRECT EXAMINATION (Continued)

BY MR. WINER:

Q Assume, Mr. Pivar, the anti-dilution clauses which are in this indenture which you have read, and assume further that the corporation, Boeing, treated the Vertol acquisition for bookkeeping purposes on a pooling of interests basis.

Would it be the duty of the accountant to determine whether the corporation has established a fair value for purposes of the anti-dilution provisions in the indenture?

A Yes.

Q What procedures would you have followed to establish or to satisfy yourself that a fair value had been established?

THE COURT: Not what he would have done.

What procedures, in your opinion, are proper accounting practice to be followed?

Put it that way.

MR. WINER: Do you understand the question as

modified by his Honor?

THE WITNESS: Yes.

A The procedure would be to read the minutes authorizing the acquisition, to read the agreements, to inquire of the company what its intention is with respect to the recording of the transaction and to review the calculations that it has made with respect to the indenture. That would, of course, require a reading of the anti-dilution provisions of the indenture. And, of course, then to see whatever the accounting for the acquisition that is intended to be followed by the company or had been followed, is in accordance with the generally accepted accounting practice, and that the determination of the fair value was in accordance with generally accepted accounting practice.

Q Assuming the following to be fact:

In or about September 1959 Boeing began a study looking to the possible acquisition of the Vertol Aircraft Corporation. On November 13, 1959 an informal meeting was held at which nine of Boeing's thirteen directors were present. The members of the board who were present had received either on November 12 or 13, 1959 a memorandum dated November 11, 1959, and a letter dated November 12, 1959, copies of which I have shown to you, and which I shall assume that you have read unless you state the

contrary.

I have also shown you a memorandum which you may assume summarizes the statements made at the meeting, which memorandum I shall assume you have read unless you state the contrary.

The November 11 and 13th memoranda are agreed Exhibit 22 in this case.

The memorandum of November 11 contains a statement of fact about Vertol and recommends an acquisition of Vertol's assets on a basis of two shares of Boeing for three shares of Vertol outstanding plus two shares of Boeing for each three shares to be issued by Vertol as a 5 per cent stock dividend if Boeing stock should be below 33 at the time the acquisition might be approved.

Those present at the informal meeting of November 13, 1959 authorized negotiations for the acquisition to be carried out on a 2-for-3 basis but to exclude from the negotiations the issuance of any shares of Boeing for any shares of Vertol which might thereafter be issued as a stock dividend, and I quote:

"Such agreement to be conditioned on the successful negotiation of a plan and agreement of reorganization to be approved by the board of directors of each company and by the stockholders

of Vertol."

The memorandum of November 13, 1959 meeting states that on November 16, 1959 there had to been no firm decision to proceed with the negotiations. In no part of the memorandum, which is Exhibit 22, is there any reference specifically to stock options outstanding in officers or employees of Vertol.

On December 7, 1959 the Boeing secretary "Outlined to the board the status of negotiations with Vertol looking toward the possible acquisition of that company by Boeing and reported that if agreements were reached it was tentatively planned to submit a plan and agreement of reorganization to the board of directors of each company on January 18 with a meeting of the stockholders shortly after February 15, and if the transaction were consummated the closing date would probably be March 31 or possibly March 15, 1960."

Assume that the plan was approved on January 18, 1960 by the two boards and by the stockholders of Vertol after February 15, 1960, and that the plan and agreement was signed thereafter as of January 18, 1960, and that the plan and agreement which I have shown you is a true copy of that plan and agreement.

Assume that the closing was held on March 31,

1960 and that on that date Boeing delivered two shares of its stock for each three shares of Vertol stock outstanding in return for substantially all of the assets of Vertol.

Assume that Boeing elected to record the transaction for accounting and tax purposes as a pooling of interests and recorded the acquired assets at $12,435,000.

Assume for purposes of the anti-dilution clause that it shows the figure of $15,250,000. Boeing claims that it arrived at that figure by multiplying the number of Boeing shares issued for outstanding Vertol shares, that is, 448,954 Boeing shares, plus the number of shares to be issued for outstanding Vertol stock options, that is, 23,782 Boeing shares, by 33-5/8, the closing price on the New York Stock Exchange on November 13, 1959, giving a total value of $15,895,748, and by subtracting therefrom $644,514, the price to be received on the stock options at $15,250,000, the price taken for each of the 448,954 shares plus 33.968.

Have you an opinion which you can express with reasonable certainty as to whether the method of fixing the price for purposes of the anti-dilution clause was a proper one?

A Yes.

Q What is your opinion?

A The use of the November 13th date -- well, there are two aspects of this, the use of the November 13th, 1959 date and also the use of the $33.96 --

Q And 5/8.

A Yes, or 8/10.

As to the use of the November 13th, 1959 date, I would view that as not determining -- not a point for making a determination, because -- would you like me to talk louder?

MR. GILLESPIE: Yes.

A (Continuing) I would not consider the November 13th, 1959 date appropriate for making the determination because the parties had not reached an agreement.

From your description with reference to the decision not to, as I recall it, not to go along with the request for a 5 per cent stock dividend, this would appear to me as a counter offer, perhaps, and therefore that date would not have any significance to me, or, at least, not enough significance to warrant the use of the price on that date for valuation of the shares issued.

As to the use of the 33.968, I think it was, which was the result of having made a calculation which started out with something , I think it is stock options,

and then subtracting out, I would not consider it appropriate to use that figure because it is a calculated figure which ends up higher than the market price of the shares on that date, and I would consider that in any event the market price of the shares of that date would be the upper limit.

MR. WINER: Thank you. I have no further questions.

THE COURT: You may examine.

MR. GILLESPIE: May I have a two-minute recess?

THE COURT: Yes.

(Brief recess.)

MR. GILLESPIE: I think I have one or two questions, your Honor.

CROSS EXAMINATION

XX BY MR. GILLESPIE:

Q Mr. Pivar, I gather that you said that you had reviewed the indenture of the Boeing Company under which the 4-1/2 per cent convertible subordinated debentures due July 1, 1980 had been issued?

A Well, I address myself particularly to the anti-dilution provision.

Q And by that I take it you mean Section 4.05 which is called the adjustment of conversion rate?

A Yes.

Q I would direct your attention particularly to Subparagraph B, ii, which reads:

"In the case of the issuance of the shares for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the board of directors."

I take it that that is the clause which you considered when you were reviewing these anti-dilution provisions?

A In connection with the Vertol transaction, yes.

Q In connection with the Vertol transaction?

A Yes.

Q In other words, you were aware that this fixed in the board of directors the determination of the fair value; you would agree, would you not?

Let me read it to you:

"The consideration other than cash" --

MR. WINER: Your Honor, he has not asked to have it repeated.

THE COURT: Wait a minute.

MR. GILLESPIE: Perhaps you would like to look at it.

THE WITNESS: It is all right.

A The answer is yes.

Q Were you aware that the board of directors had the opinion of outside counsel as to the method of determination of fair value that should be followed and the opinion of their independent auditors, Touche Ross and of the investment banking firm of Harriman, Ripley with regard to this matter?

MR. WINER: I object to the form of the question. I object to outside counsel when they were the firm's long-time counsel.

MR. GILLESPIE: All right, the firm's long-time counsel. I will amend my question accordingly.

Q Were you aware that the board of directors had these opinions when they determined fair value?

A I was shown a copy of a letter which I was told was written by Touche Ross & Company. As to the other sources, I think I heard to that effect only by sitting in the back of the courtroom this morning, as i recall it.

MR. GILLESPIE: I have no further questions.

MR. WINER: I have no further questions, your Honor.

THE COURT: What was the conversion figure? What were these bonds converted at?

MR. GILLESPIE: 2 for 1, your Honor.

THE COURT: No, in dollars and cents.

MR. GILLESPIE: Well, it is $50.

THE COURT: They were converted at how much a share?

MR. GILLESPIE: I think the conversion was taken at a hundred dollars, and two shares of stock for that hundred dollars, which would be 50.

THE COURT: And they also had a right to subscribe, didn't they?

MR. GILLESPIE: Well, they had a right of conversion, and if they converted they would get two shares of stock.

THE COURT: But they had a right prior to that time to get their stock?

MR. GILLESPIE: They could have prior to that time, any time.

THE COURT: What was that rate?

MR. GILLESPIE: It was two shares of stock for each hundred dollars of debentures.

THE COURT: And the stock at that time was what?

MR. GILLESPIE: At what time, your Honor?

THE COURT: At the time prior to when it was called.

MR. GILLESPIE: Just prior to when it was called?

THE COURT: Yes.

MR. GILLESPIE: Approximately $150.

THE COURT: You have no further questions to ask of this witness?

MR. GILLESPIE: No further questions.

THE COURT: You have no further questions?

MR. WINER: No.

Does your Honor understand that it was $150 for each share? There were $300 for two shares.

(Witness excused.)

THE COURT: Now do the plaintiffs have any more witnesses?

MR. WINER: No.

THE COURT: Plaintiffs rest?

MR. WINER: Your Honor, there is one aspect which I am not sure whether your Honor wants brought up here or not.

We served requests for admissions. We received answers, and in the answers -- and I can speak generally because this is true right down the line -- in the answers all specific items were admitted and a reservation was made with respect to all other items, saying that they had made inquiry and after making the inquiry they could not

say yes or no. And I have been trying to find out what inquiry they made.

Now I should like to have that on the record.

May I give your Honor one example so that the question will be clear to you?

THE COURT: As to requests to admit, if they do not respond and they say they haven't got it or they don't know, then you have a right on the requests to admit to produce the evidence and tax them with the additional costs. That is the penalty.

Also as to requests to admit, if it is obvious that they must have some knowledge about it, the next way to proceed would be to ask that a deposition be taken of certain witnesses.

MR. WINER: I wonder if I might read one of these.

THE COURT: I don't know what good it would be to read it to me, but you can read it.

MR. WINER: I would like to read it to you for the purpose of seeing if we could get on this record what effort was made by them to find out.

THE COURT: If you can show that there is a conscious concealment of any evidence in this case, you may do so as part of your case.

MR.WINER: That is what I would like to do. I would like to read one and have a ruling --

THE COURT: If you would like to do it, then give me the evidence on it.

MR. WINER: Well, until you understand what it is, your Honor, I don't think it is possible for me to give you evidence.

Well, let me read this to your Honor.

Request No. 3:

The practice of New York City commercial banks, including, specifically, First National City Bank, Chase Manhattan Bank, Chemical Bank, Sterling National Bank and Federal Reserve Bank, whether acting as a depositors' bank or as a collecting bank, is to remove the coupons from the depositors' envelopes, to combine the coupons of a single issue into another envelope, and to transmit the coupons to the paying agent, and these banks retain the depositors' envelopes for at least six months.

Response:

Defendants admit that the practice specified in request No. 3 is the present practice of the following New York City banks:

First National City Bank, Chase Manhattan Bank, Chemical Bank, Sterling National Bank and Federal Reserve

Bank.

Defendants lack information or knowledge as to the practice of other New York City commercial banks. Defendants have made reasonable inquiry, and the information known to or readily obtainable by them is insufficient to enable them to admit or deny such matter.

Now, I should like, if your Honor please, to have a statement from the defendants on the record --

THE COURT: I am not going to direct them to make any statements.

MR. WINER: I respectfully except.

THE COURT: Now I asked you before, do the plaintiffs rest?

MR. WINER: Right.

MR. WECHSLER: Your Honor, the defendants have submitted objection to parts of the stipulation and exhibits thereto, and I just want to make certain for the record that plaintiffs have an exception in the event that your Honor rules that any of the objections to the stipulations --

THE COURT: Have they pressed any objections at this time?

MR. WECHSLER: The defendants have submitted a list of objections.

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THE COURT: I have those. I overruled each and every one of them. This is a non-jury case.

MR. GILLESPIE: Plaintiffs rest, I take it, your Honor?

THE COURT: I understand so, though I may not have a categorical answer.

Do the plaintifs rest?

MR. WINER: Yes, your Honor.

THE COURT: All right, plaintiffs rest.

MR. GILLESPIE: The defendants, your Honor is aware, have presented their case in part during the examination of the plaintiffs' witnesses.

THE COURT: Yes.

MR. GILLESPIE: We have one other witness that we would call at this time, and that is Mr. Gorans of Touche Ross.

THE COURT: All right.

- -

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G E R A L D E. G O R A N S , called as a witness by the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GILLESPIE:

Q Mr. Gorans, what is your occupation?

A I am a Certified Public Accountant.

Q And where do you practice?

A I practice with the firm of Touche Ross Bailey & Smart in Seattle, Washington.

Q How long have you been with that firm?

A Since April 1st, 1947.

Q What part, if any, have you had in connection with Touche Ross' engagement with the Boeing Company?

A I have been directly involved In the audit either in a supervisory capacity or partner in charge of the audit since 1955.

Q Would you just state briefly your professional qualifications.

Are you a CPA?

A I am certified or licensed to practice as a Certified Public Accountant in the State of Washington and in about four other states.

I am a member of the American Institute of

Certified Public Accountants; the Washington Society of Certified Public Accountants; currently serving as the chairman of the National Defense Committee of the American Institute of CPAs.

Q Did you participate in the audits of the Boeing Company conducted by your firm with respect to the financial statements of the Boeing Company for the years 1958, 1959 and 1960?

A Yes, I did.

Q What was the extent of your participation?

A During each of those years I basically was in charge of all the field work that was done on the audit and up to the completion of the report. Mr. Tremper, who was partner in charge of the office, had the ultimate top responsibility, and he confined that pretty much to dealing with top issues and top matters.

Q Were you familiar with the fact that in the year 1957, 1958 and 1959 the Boeing Company declared certain, what they called, limited stock dividends?

A Yes.

Q Were you also familiar with the fact that in 1959 and 1960 the Boeing Company carried out the acquisition of the Vertol Company?

A Yes.

Q In connection with those limited stock dividends and in connection with the acquisition of the Vertol Company, what review did your firm make in connection with the treatment of those limited stock dividends and that acquisition for accounting purposes?

MR. WINER: Your Honor, may we have this year by year, please?

MR. GILLESPIE: I am quite willing to do it.

Q Perhaps you might tell us what you did in the year 1958 and then we will go to 1959 and then to 1960.

A In 1958 there was one stock dividend issued, limited stock dividend.

Our procedures were to review the minutes to see that it was actually authorized. We then reviewed the procedure of calculation to see that it complied with what they had been doing in the past, and what they had been doing in the past had pretty much been checked out to see that it complied with generally accepted practices of accounting some years before.

Q Was that to determine whether the proper amount had been transferred from earned surplus to -- what is the account that you --

A To the capital stock account.

Q -- to the capital stock account?

A Yes.

Q Was that checked?

A Yes.

Q And did you do anything further in the year 1958?

A Not specifically that I recall.

Q Now let us turn to the year 1959:

Would you tell us what you did in 1959?

A In 1959 when the matter of the Vertol issue came up, that was an additional matter for consideration. The stock dividend issued in November 1959, as I recall it, was handled in the same way as it had been handled in the prior year, and the year before that, and so on.

As far as the Vertol issue was concerned, it was a matter of reviewing the indenture at that point to make sure that the company was complying with the requirements of the indenture.

Now, in connection with the 1958 audit - if I may back up for a moment - we also, of course, looked at the indenture to see that the company was complying with it.

We also checked there to make sure that the stock dividend was not in violation of the dividend covenants within the indenture.

Q Was part of your engagement to determine whether or not the company had set aside the proper number of shares for the holders of the convertible debentures in the event that they converted?

A Yes.

Q I think you said a moment ago that you reviewed the indenture in connection with this?

A Yes.

Q And I assume that included Section 405 which relates to the conversion rate?

A Yes.

Q And you were thoroughly familiar with it, I assume, at that time?

A Yes.

Q Now in connection with the certification of the financial statements on the company -- and I would refer specifically to the statements for the year ended December 31, 1960 -- I ask you whether your certificate goes to the item on the balance sheet --

MR. GILLESPIE: And, your Honor, this is Exhibit 25 - is that correct?

MR. WECHSLER: 36.

MR. GILLESPIE: Exhibit 36 to the agreed statement.

Q (Continuing) I note on page 27 of the balance sheet an item under Stockholders Investment, and under that is "Capital stock authorized 10 million shares (610,900 shares reserve for conversion of 4-1/2 per cent convertible subordinated debentures)."

Is that reference to shares there the number of shares which were needed in order to satisfy the holders of the convertible debentures in the event they converted?

A Yes, that is.

Q And this is the figure that you say your audit for that year checked and verified?

A Yes.

Q And that was after reviewing the accounting used with respect to the limited stock dividend for the year 1958 and 1959, and also with respect to the stock issued in connection with the Vertol acquisition, is that correct?

A Yes.

Q Now your firm gave an opinion, did it not, in April 1960 to the board of directors in connection with the acquisition of the Vertol Company?

A You mean on establishment of fair value?

Q Yes.

A Yes, it did.

Q I show you what has been marked here as Exhibit 30 in the agreed statement of facts, and ask you if that is the opinion?

A Yes it is.

Q Now, in connection with giving this opinion did you review again the limited stock dividends that had been previously issued in connection with this in the prior years in 1958 and 1959?

A In connection with this debenture?

Q Yes, at the time that you gave this opinion.

A We probably looked at it, but this opinion does not specifically relate back to those stock dividends.

Q Now, in connection with the giving of this opinion did you consider whether or not in determining fair value the matter of general accounting principles should apply or should the directors be guided by the indenture?

MR. WINER: I object to the form of the question, your Honor.

THE COURT: Overruled.

A The indenture, the provisions of the indenture prevailed here, and the only question, really, we were asked, is, "With these alternatives available, which one do you think is the most equitable to be used for purposes

of recognizing a value of the Vertol Company for purposes of evaluating the necessity for an adjustment of the conversion rights of the convertible debentures?"

THE COURT: Were you searching, then, for something that was more equitable or for something that complied with the provisions of the indenture?

THE WITNESS: Well, the directors of the Boeing Company had the responsibility of determining the fair value to be placed on the Vertol Company in total. They asked us and others for our thoughts on what would be an equitable method of arriving at a fair value, and this letter is directed towards that purpose, provided to Mr. Haynes, who made the report to the board of directors.

Q Now, for the purpose of determining whether there should be any adjustment in the rate of conversion due to a limited stock dividend as defined in the indenture of the Boeing Company, would you tell us how you went about your review to determine whether or not there should be any change in the rate of conversion?

A Basically it was a matter of taking the indenture document and reviewing those particular procedures which was set forth to guide the person responsible or anyone who might want to make the calculation to calculate the effect of the company's transactions within

its stock to see what the impact was on the conversion rate.

Now it is a matter of taking the indenture, reading the indenture and doing what the indenture said to do.

Q And were you aware, Mr. Gorans, that the company had followed a procedure for accounting purposes, a procedure with respect to the limited stock dividends that differed from that which was applied in connection with the indenture?

A Yes.

Q Were you aware of this at the time?

A I was aware of it at the time. The limited stock dividends, as defined in the indenture, are very specific. The stock dividends were declared by the company --

MR. WINER: I object to his reciting what is in the indenture. It is in evidence.

MR. GILLESPIE: I think his understanding of what he was called upon to do --

MR. WINER: I don't think his understanding is necessary. I object to the question.

THE COURT: The objection is overruled.

You may answer.

MR. GILLESPIE: Go ahead.

A The stock dividend, as far as the transfer from earned surplus account to stock account is an accounting matter, and the accounting rules are what basically prevail in making that entry.

The indenture is a legal document, and as far as we were concerned, the legal rules apply, and the accounting rules in this case that the company was following were different than the specifics within the indenture.

MR. GILLESPIE: No further questions, your Honor.

CROSS EXAMINATION

XX BY MR. WINER:

Q Did you decide what the legal document required?

A No, the legal document was prepared by the attorneys.

Q Who decided what the legal document required?

A I read the legal document.

Q So you decided that?

A To the extent that I felt I could.

Q Well, to what extent did you not feel you could?

A I didn't see anything in here that presented any problems so far as I was concerned.

Q So you were the man who interpreted the legal

document, is that right?

A Not alone. There was another partner in the firm who was involved in this at the same time as I was, and a manager involved in it at the same time I was.

Q You mean other people in Touche?

A Yes.

T2-jg Q And you people in Touche made the legal decision as to how to apply the document, is that correct?

A We made the determination and the calculations on the basis of what the legal document said.

Q What it said to you.

A That's right.

Q You didn't get any other opinion, did you?

A Not specifically. Other opinions were given.

Q Were other opinions given to you?

A They were made available to us.

Q When were they made available to you?

A I can't specifically tell you.

Q By whom were they made available?

A And I can't even tell you who specifically made that available.

Q Whose opinions were they?

A Well, the opinion that I have seen in the document here - I can't tell you when I saw it the first

time - from Harriman, Ripley, and there is an opinion in here from the attorneys, and particularly as it relates to the Vertol valuation and the calculations involved there.

Q When did you make this decision?

A Which decision are you referring to?

Q Whichever decision you made about the applicability of the legal documents.

A Well, in 1958. I helped -- actually I reviewed the document when it was being drafted.

Q What decision did you make in 1958?

A That I understood the terms of the document.

Q Can you tell us specifically what you understood in 1958?

THE COURT: Oh, please, please.

MR. WINER: I beg to press the question.

THE COURT: Well, the objection is sustained, the Court's objection.

You may ask him with reference to specific provisions in the agreement, if you want to.

MR. WINER: I don't know what specific provisions. He is the witness --

THE COURT: You may ask him concerning anything that you feel is applicable to this case, a provision

applicable to this case.

Q Which provision of the indenture applicable to this case did you consider in 1958?

A In 1958 the entire document was given to us to refview, to see if we understood it or had any problems with the accounting matters that would become involved in the document.

Q Now, did you have any problems?

A No.

Q In 1958, you said that you reviewed the indenture to see if the company was complying with it, is that correct?

A As soon as it became effective we had to review it to see that they were complying with it, standard operating procedure.

Q Did you review the situation after the declaration of the stock dividend on November 3, 1958?

A I'm sure we did because the stock dividend then came into the impact of restrictions on what the company might do in the way of future cash dividends and in the way of future stock dividends.

Q Which document did you see?

A What do you mean, which document?

Q Was there an internal company document calculat-

ing the amount of the conversion rate and the amount of earnings available for the declaration of dividends and the amount restricted by the 4-1/2 per cent indenture and the 5 per cent indenture? Wasn't there such a document in the company?

A I don't know. We made our own calculation.

Q You didn't see it?

A We made our own calculation.

Q All right. Let's get to that.

Did you review any internal document of the company making calculations in the year 1958?

A I don't remember. I could very well have.

Q And you could very well not have?

A Probably not. If the company had the documents, someone within our firm working on the audit and going through these things probably reviewed what the company had.

Q Did you see that for purposes of the indenture they calculated the conversion rate at the closing price of the stock on November 3, 1958 divided by 1.04? Did you ever see that document?

A I've seen it in court here.

Q Did you see it in 1958?

A I said I don't remember.

Q You don't remember now whether you ever saw it --

A Specifically whether I saw that document in 1958.

Q Did you know --

A I can't say that I specifically remember seeing it.

Q Did you know what the contents of any calculation by the company was?

A I said I reviewed the calculations that were made.

Q Which calculations did you review?

A I don't know.

Q You don't know.

A There is a figure in the report to the stockholders that shows the transfer.

Q Shows what?

A A transfer from earned surplus to capital stock.

Q We know that.

THE COURT: Those are figures that you reviewed?

THE WITNESS: Yes.

Q Did you review the figures that showed the calculations for the purposes of the conversion rate?

A We made some of our own calculations for the

conversion rate.

Q Have you got them?

A No.

Q I repeat my question.

Did you review any calculations made by the company for the year 1958?

A I said we probably did, if they had them, but I can't remember and specifically say we did.

Q Wasn't it your duty to ask the company for calculations which it made under the indenture?

A Not necessarily, if we made the calculations ourselves and they agreed with what the company had reported.

Q You say "what the company had reported"?

A Yes.

Q What do you mean by "what the company reported"? Do you mean reported for calculation under the indenture?

A No. What is included in the annual report to stockholders.

Q I'm asking you specifically. Did you review any calculations which the company made for purposes of the conversion rate under the indenture?

THE COURT: We've been over that five times now. All right, once again.

A I can't specifically say whether I reviewed something that the company calculated. We did our own work in that regard, made our own calculations. But again I say I'm sure that we did, if the company had them.

Q Do I understand, sir, that you feel it is not your responsibility to review the company's calculations if you made your own?

A If they agree with the company's, why do I have to go through that.

Q How do you know if they agree with the company's without seeing the company's?

A The figures ended up in the annual report to the stockholders.

Q The figures on the conversion rate ended up in the annual report?

A The figures on the conversion rate affected the retained earnings as far as dividends were concerned and required an annual calculation as long as those bonds were outstanding.

Q I want to ask you one more question.

Did you assume that the figures which appeared in the report for bookkeeping purposes were the same figures as had been used by the company for calculations under the indenture?

A I'm sorry, sir, but those figures are in the report to the stockholders and those are the figures we checked.

THE COURT: I think we've had enough of this. Go to something else.

MR. WINER: I would like to ask the witness one question.

Q You say those figures appear in the report. Which figures are "those figures"?

THE COURT: Objection sustained, the Court's objection.

Q Were you as an accountant, or your firm as accountants, in 1960 called upon to give an opinion as to whether the board of directors' determination was equitable?

A If you will read our opinion, it says that we were asked, and we did provide a letter to the controller which set forth our thought on an equitable way of arriving at a fair value on the Vertol Company.

Q Was that the function of the accountants, to give an opinion as to whether a figure was equitable?

MR. GILLESPIE: Your Honor, I submit we've got the document here. It seems to me it speaks for itself as to exactly their understanding.

MR. WINER: He could have written anything --

THE COURT: It does.

MR. WINER: I want to know --

THE COURT: You asked a question. Now wait for an answer.

MR. WINER: I'm sorry.

A I'm not sure which question we are on now.

THE COURT: I don't blame you. Give h im another question.

Q Was it your function as an accountant to give an opinion to the corporation as to whether the value taken was equitable?

A Yes.

Q Now, under which rule does it come that accountants give opinions as to whether a price put on an acquisition is equitable?

A I can give my opinion as an accountant, I can give my opinion personally, I can give my opinion when asked on something of this nature, "What do you think a fair approach would be?", and I believe that I have that right, to give that opinion, and I can't go to a specific document that says I cannot.

THE COURT: It is three o'clock. How long are you going to be?

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MR. WINER: I really don't know.

THE COURT: All right. Do you want to continue until Monday?

MR. WINER: I don't wish to continue until Monday.

THE COURT: I told you that I wanted to leave here at three o'clock.

MR. WINER: I'm sorry, but I cannot continue --

THE COURT: I'm not complaining. I gave you extra time because I thought --

MR. WINER: I'll be here Monday, your Honor.

THE COURT: And with the help of the Lord I will.

Have you any other witnesses, Mr. Gillespie?

MR. GILLESPIE: No other witnesses, your Honor.

THE COURT: Have you any rebuttal evidence?

MR. WECHSLER: No, sir.

THE COURT: All right. I have a matter on Monday at 9, at 9.15 and at 9.40. Make it 10.15 in thsi room.

MR. GILLESPIE: Your Honor, I wonder just how much more Mr. Winer has, because these gentlemen, as you Honor I am sure is aware, are all from Seattle.

Have you got any idea, Mr. Winer, how much

longer you will be?

MR. WINER: Mr. Gillespie, I have not. I am sorry to say I have not.

MR. GILLESPIE: All right. We'll be here at 10.15 on Monday.

(An adjournment was taken to Monday, November 20, 1972, at 10.15 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Harold F. Olsen (Resumed)			240	
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WILLIAM R. VAN GEMERT, et al

vs. 66 Civ. 1820

THE BOEING COMPANY, et al.

New York, November 20, 1972;
10.15 o'clock a. m.

(Trial resumed.)

- -

THE COURT: All right, Mr. Gorans, you may resume the stand and we will finish your examination.

G E R A L D E. G O R A N S , resumed.

CROSS EXAMINATION (Continued)

BY MR. WINER:

Q Mr. Gorans, did Boeing keep a book of calculations which included calculations under the bond indentures?

A I don't know.

Q Where did they keep calculations of bond figures, as far as you know; that is, money available for dividends within the bond restrictions, conversion rates, and so on?

A I don't really understand your question, Mr. Winer.

Q Well, did they keep any records that you know of with respect to the restrictions under the bond

indentures and conversion rates?

THE COURT: Do you mean by that, did they keep any books of account which had accounts which provided for the amortization of payment, redemptions or conversions?

MR. WINER: Yes,sir.

THE COURT: Did you have any special ledger account?

THE WITNESS: NO, they may have had memorandum records of calculations, but there are no requirements, or no provision with the accounting records as such, to maintain these calculations.

THE COURT: Well, isn't there a requirement, under good accounting practice, that you keep track of the amount of outstanding convertible debentures?

THE WITNESS: Yes.

THE COURT: And of the amount redeemed?

THE WITNESS: Yes.

THE COURT: And identification of what was redeemed, the date, what was paid for it and what was issued for it?

THE WITNESS: Yes, those records would be maintained.

THE COURT: There was no special fund set up,

was there, according to the indenture providing for redemption?

THE WITNESS: The time frame for the payment into redemption fund had not yet taken place. I think the first year was 1978.

THE COURT: But on the other matters, on redemption and the manner in which they were redeemed and what was issues for them --

THE WITNESS: That was all recorded in the accounting records.

THE COURT: And there were none paid off by way of redemption?

THE WITNESS: None paid off, but there were some that were converted during those years.

THE COURT: Now what he also had in mind is this:

Did the company go into the market and buy any of the convertible debentures itself?

THE WITNESS: No, they did not.

THE COURT: All right.

BY MR. WINER:

Q Now did you know of, and do you now recall whether you knew of regular calculations, periodic calculations as to the conversion rate, as to the effect

of funds on bond restrictions? Do you know of any such record?

A I have seen some memorandums that have been produced, but I do not know that I actually saw those at the time they were prepared. Someone in our office may have seen them.

Q Did you ever seen them?

A I have seen them since this matter came up.

Q You didn't see them back in 1960, 1959?

A I can't say whether I did or not. I don't recall having seen them in that time frame.

Q So that we are clear, I show you Exhibits 19 and 20. Are these papers which you have seen since this matter came up, by which I assume you mean since this litigation?

A Yes, I have seen that one.

Q Now would you turn to the next one, please, Exhibit 20?

A I have seen this since this litigation began but I don't remember seeing it before.

Q Were these two papers, Exhibits 19 and 20, when you saw them since the litigation came up, were they in some kind of book form?

A Yes, in this book.

Q You didn't see the originals of these papers?

MR. GILLESPIE: Your Honor, may the record reflect that Mr. Gorans when he referred to a book was referring to the agreed statement.

MR. WINER: Certainly.

Q Did you see them in any other book?

A Not to my knowledge.

Q Are you the author of the opinion letter, which is Exhibit 30 in this case?

A I believe that Mr. Tremper is probably -- between the two of us we drafted that.

Q You participated in the drawing of the letter?

A Yes.

Q At the time that you drew that letter did you review any computations calculations at Boeing with respect to the conversion rate?

A Not to my knowledge we did not.

Q Changes in the conversion rate are cumulative, are they not?

A Yes.

Q Did you feel any responsibility to investigate what prior computations had been made?

A Well, I don't believe that the computations had anything to do with arriving at a fair value for Vertol to

comply with the indenture, and, accordingly, I would not have been concerned about making calculations.

Q How about the end of the year?

A At the end of the year at that point in time, yes.

Q Did you then review these papers?

A Which papers?

Q Exhibits 19 and 20.

A No, not to my knowledge, I wouldn't have reviewed them necessarily.

Q Did you review any other calculations of Boeing?

A At that time, Mr. Winer --

Q Excuse me. By "at that time" you mean the end of the year?

A Well, in connection with the audit for the year 1959, in connection with the audit for the year 1960, the Vertol matter does not come into bearing until 1960, because that is when the transaction was completed. At that time we made our calculations in connection with the indenture, as we did years before, and the calculations then were based upon using the fair value as established by the board of directors for the Vertol acquisition and the limited stock dividends as provided within the indenture, the calculations that related to those.

Q Would you please turn to Exhibit 35, or I will turn to it to help you. Do you see a figure there of $644,000 odd for the stock option shares of Vertol?

A You mean on Page 3, under the section with the capital letter "C"?

Q That's not the exhibit. This is the exhibit I turned to, 35.

A It consists of four pages.

Q Now, turning to Page 3 under stock options, $644,514, did you make that computation on your own?

A I'm not sure we would have.

Q Well, how did you compute the conversion rate?

A Well, the conversion rate, Mr. Winer, according to the indenture, was to take into account dividends, stock dividends issued as defined, plus any shares were issued for other assets in which a dollar amount was not paid to the company. Then, as I recall, the indenture says the board of directors will fix a price of fair value for the assets acquired for the shares issued, and the board having fixed a fair value, then we would take that figure.

Q Mr. Gorans, did the indenture provide for valuing stock options?

A There is a specific provision in there, as I recall now, that the company could issue stock options. I don't recall

exactly how they worked in the calculation at the moment.

Q Do you recall what was provided for in the valuation of the stock options? Do you or do you not?

A As I recall, the stock options that Boeing had issued and were outstanding had no effect upon the dissolution factors as far as the conversion rate is concerned, as long as the company did not issue in excess of those that were authorized at the time the indenture was prepared.

Now, the options that you are referring to here were the ones apparently given to the Vertol employees, and I should say Vertol stock options that Boeing assumed as part of its obligations in taking over the assets and liabilities of Vertol, and at the time of establishing value for the Vertol acquisition the board of directors of Boeing assumed that they had the obligation to issue or to honor these options should they be exercised, and, accordingly, took into consideration the number of shares in total that would be issued, which included the two shares of Boeing or the three shares of Vertol, plus the shares that would have to be issued if the Vertol employees exercised their options, and, as I recall, those options were adjusted on the same basis; if an employee had an option for three shares, he received an option for two shares of Boeing stock at the equivalent price.

Q Have you your calculations here?

A No, I do not.

Q Are your calculations any different from the calculations that Boeing took on Exhibit 35? Is there anything wrong with those?

A Once the board had determined the fair value of the Vertol acquisition, that fair value was the governing thing in determining it.

Q What was the fair value?

A The fair value established by the board of directors.

Q Was how much?

A $15,250,000, plus the dollars that they would receive if the Vertol employees exercised their options to acquire the shares that Boeing assumed the obligation to issue.

Q You don't know whether that latter figure, which is the figure for the options, you don't know whether that was provided for in the indenture or not? Do you?

A The indenture provides for establishing the fair value for the assets acquired.

Q Well, I am asking you specifically for about the fifth time, what did it provide with respect to the stock option shares?

A It had nothing to do with the stock option shares.

Q The indenture didn't have anything to do with stock option shares?

A These option shares issued to Vertol as a liability, I should say, honored by Boeing as part of the liabilities they assumed when they acquired Vertol.

Q Then in Government's Exhibit 35, the stock option Section 405(b)5, that was really a mistake?

A Yes.

THE COURT: In what respect was it a mistake?

THE WITNESS: Well, there was a provision in the indenture that if Boeing issued the option shares or other convertible shares or other types of shares in which there was a question of their ultimate issuance and so forth, over and above the 350,000 shares that had been authorized to be issued either in connection with stock options or in connection with incentive awards, then the price received for the options over and above that would be taken into account in the calculations for adjustment purposes.

The assumption all the way through -- and I believe there is legal opinion to this effect -- that Boeing assumed the liabilities of Vertol, these shares were then a part of the acquisition of Vertol free from preemptive rights, and the calculation that is referred to here was really -- it's a multiplication to show how much Boeing would receive if

those options were exercised, and that figure was added to the $15,250,000.

Q Are you telling his Honor that that figure of $644,514 was not used in calculating the conversion rate?

A No, I did not tell him that.

Q It is used in calculating the conversion rate?

A As part of the acquisition of Vertol.

Q Have you divided $15,250,000 by 448,972 shares?

A I did, I think, last Thursday and Friday.

Q And did it come to 33.968?

A I believe that that is about right.

Q It is exactly right, isn't it?

A I am going by memory; you are telling me, I would say yes, I know it is close to that.

Q Now, then, did you ever express in your opinion the possibility that Boeing might value the shares at anything higher than the closing price on the New York Stock Exchange on November 13, 1959?

A I think the letter that we issued to Boeing in connection with the valuation of Vertol set forth about four different ways in which the company could have determined the fair value if they so desired.

Q Did it ever set forth a figure higher than the closing price on November 13, 1959?

A I don't believe our letter sets forth any calculations.

Q Didn't your letter say that they could take the closing price on November 13, 1959?

A Our letter states that the closing price on November 13, 1959, would be a fair way of arriving at the fair value of the company.

Q Did it say that any figure higher than the closing price on that day would be a fair way?

A I don't recall.

Q Would it be a fair way, taking a figure higher than the closing price on any given date selected for the valuation of the stock?

A The board --

Q Would it or would it not? Do you know of any basis in accounting or in accounting principles or opinions of the Accounting Principles Board which allows you to take a higher price than the closing price on a particular day which has been selected for valuation?

A Mr. Winer --

Q Do you or don't you?

A Mr. Winer --

Q Do you or don't you?

THE COURT: Please.

MR. WINER: I ask that the witness answer the question.

THE COURT: Let him answer it in his own way.

A Mr. Winer, the accounting rules in essence talk about fair value, and they say there are different ways of arriving at fair value, and our letter sets forth, I think, four methods that could be used, one of them being appraised value, one of them being book value, one of them being market value on stock, and market value, since it fluctuates, is a question of what date you might use, but the company clearly had the right to have all those assets appraised and take into consideration the going concern basis of Vertol, and I believe there is something in the minutes that indicate that this probably would be a higher value than the $15,250,000.

Q As an accountant, could you go on the basis that there is something in the minutes which indicates that there probably could be a higher value?

A Mr. Winer, the board had the authority to establish a value, and all I can do is say, there are different ways of doing it.

Q But didn't you have to certify the final report of 1960?

THE COURT: Haven't we been over this before? Didn't he say on Friday that he was shown and was told of

a legal opinion that had been given? Wasn't that your testimony on Friday?

THE WITNESS: At that time I said there were other opinions available; we knew about them. I believe the attorney's letter was not actually issued until subsequent to this, and yet I am sure we had conversations with them as to what they would say. So we didn't rely strictly on our judgment as to final outcome.

Q Where did you report your computations?

A I am not sure I understand the question.

Q Did you ever explain it anywhere?

A What calculations?

Q Whichever ones you made?

A I don't know how to answer the question.

Q All right, I will take that for an answer.

Did you ever explain it anywhere?

A What calculations?

Q Whichever ones you made.

A I don't know how to answer the question.

Q All right, I will take that for an answer.

Did you ever record your calculations any place?

A What do you mean when you say "record them"?

Q I assume that record mean writing them down some place where they could be kept.

A Record to me is putting something in an official document that becomes part of the company's records.

Q Let's take your definition. Did you ever record them anywhere?

A I don't record anything any place; as an accountant I'm not to do that.

Q Do you have work papers?

A Yes, we have work papers.

Q Where are they?

A They are in SEattle.

Q Do you know Mr. Melby?

A Yes.

Q Was he a capable man?

A Yes.

Q You have since the litigation read Exhibit 19 and Exhibit 20, which have Mr. Melby's name at the bottom?

A Yes.

Q Read the part which refers to conversion rate of the debentures.

A You mean the B stock dividend and conversion rate?

Q That is what I mean, yes.

A You want me to read it aloud?

Q I will be glad to have you read it out loud.

A B stock dividend and conversion rate:

The 4% stock dividend issued in December, 1958, did not change the original conversion rate of two shares per $100 principal amount of debentures.

Under the provisions of the indenture, the 4% stock dividend is classified as a limited stock dividend, and as such it added 281,537 shares and $15,414,151 additional consideration to the conversion rate formula.

Because of this, the formula results in a calculated rate of 1.9927 shares per $100 of principal amount of debentures, but the indenture does not allow the rate to be reduced below the 2.00 shares per $100.

A limited stock dividend may be classified as such only to the extent that it is earned. The following amount is available for additional limited stock dividend:

Net Earnings	1/1/58-12/31/58	$26,610,013
Less: Cash Dividends	1/1/58-12/31/58	7,016,727
4% Stock Dividend	12/58	15,414,151
		4,179,135

This amount, together with the 1959 earnings, would then be available for cash and stock dividends within the coming year.

Q Now, does this paragraph which you have read indicate to you that Mr. Melby had read the indenture when he read that paragraph?

A Well, it says he did, but I don't believe he followed it.

Q I didn't ask you whether he followed it. I asked you, did you think he read it before he recited the provisions of the indenture?

A Well --

Q And he was a capable man?

A That is right.

THE COURT: Give him a chance to answer the question.

A Well, it implies here that he has read it, because he refers back to it, and I assume in order to do that he had to read it.

He also uses the same figure in there that was used in the accounting figures for transferring dollar amounts from earned surplus to the capital stock account, and that figure is not calculated in accordance with the indenture.

MR. WINER: I move to strike it out.

THE COURT: He is giving an accounting opinion.

Q Your opinion was asked as an accountant, was it not?

A Yes.

Q Now, in your opinion letter of April 4, 1960, you informed Mr. Haynes that there are four methods acceptable for reaching fair value. First you say is the fair market

value of capital stock issued, and then the appraised value of the tangible assets acquired.

Now, they had no appraisal, did they?

A In the minutes some place an appraisal had been made in 1960 1958 for insurance purposes.

Q But you didn't have an appraisal made for the valuation in 1960, did they?

A No.

Q So we eliminate that method.

Now, then, capitalization of prior earnings of the company is another method. Do you know what the earnings of the company were?

A Right now I don't remember.

Q Suppose I told you that in the 90 days of 1960 the earnings consist ed of a pre-tax loss of $988,636, and after tax credit, or after crediting the taxes, the after tax loss was $476,770; how would you capitalize that loss?

A I don't think that you would capitalize the loss.

Q Now, how many years would you take as reasonable to capitalize the earnings?

A Oh, I have seen different methods used. Three to five years in cases; sometimes even longer.

Q You said three to five; is that your testimony?

A I said I have seen three to five years used. I have seen longer periods used.

Q What is your opinion, five, or three, or which, or either?

A I wouldn't fix on any fixed period of time. It depends too much on the company you are dealing with.

MR. WINER: Now, Mr. Levit, would you refer please to Exhibit 26 and see if we can agree on the earnings in the three years prior which are required to be reported to the SEC.

Mr. Levit, if you will take these down, subject to correction, I think we would save time.

MR. LEVIT: What reports?

MR. WINER: There are different annual reports. I am reading from all the annual reports, Lybrand Ross Bros. & Montgomery. I think that is the name of the firm.

Will you take these subject to connection, Mr. Gillespie?

MR. GILLESPIE: I will put down what you say.

MR. WINER: 1957, earnings of 1,656,768;

1958, 869,553;

1959, 235,299.

And the record also shows that of those 235,299, 179,890 were earned in the first three months of the year.

BY MR. WINER:

Q Now, would you say that those figures could be

averaged and fairly capitalized?

A Could be averaged. I don't think that they would be necessarily indicative of what the company was worth. I believe Mr. Allen said that he debated very seriously about --

Q Well --

THE COURT: Please don't interrupt him.

MR. WINER: Your Honor --

THE COURT: Let him finish his answer. Don't interrupt him.

A (Continuing) Mr. Allen testified that they seriously considered the acquisition of this company not on the basis of its earnings but on the basis of its know-how to start into the STOL aircraft type of equipment.

Q Is that what you told them in your opinion letter?

A Where is that letter?

Q What did you say about capitalized earnings?

A I said that was one method of calculating value.

Q I'm trying to find out about capitalized earnings. Let's go through your four methods one by one --

THE COURT: Didn't we go through them five times? Don't go through them again, please.

MR. WINER: I would like to ask this witness, who wrote this opinion letter, about each of his methods.

THE COURT: You have already asked him about them.

MR. WINER: But I have no answers. I have asked him but I have no answers.

THE COURT: He has given you the best answers he can. He has said it a number of times.

Q At what rate would you capitalize earnings?

A You would have to look at the company again. Why does one company sell at 50 times earnings and another at nine or ten times? There is no fixed answer that you can say that you used a 5 per cent rate or 10 per cent rate. It depends on the industry.

Q How would you capitalize a company that was making less money each year, going down from one million-six to 800,000, to 200,000, and then to a loss of nearly a million in three months? Which figure would you take to capitalize those earnings?

A As I said, it is not a fair way of determining it.

Q But it is in your letter, isn't it? You are the one who wrote the letter?

A I haven't changed my opinion. I still think it would be an improper way to value the company.

Q Now, you said the present book value of the assets acquired is another way. What was the present book value of the assets acquired?

A Somewhere in the neighborhood of 12 --

Q 12,435,000, is that correct?

A I don't remember for sure.

MR. WINER: Take it subject to correction.

Q Now, then, with all these four methods they selected stock prices or a stock price, is that correct?

A I am reluctant to say they did. They used it as a basic of judgment.

MR. WINER: Will you read that answer, Mr. Reporter?

They used it what?

(Last answer read as previously recorded.)

Q Now, I read to you from page 2 of your letter;

"Because of the fluctuations in the market price of the company's stock between the date negotiations were authorized by the board of directors and the closing date, we believe the market value of the company's stock on the date negotiations were authorized was more indicative of what the board of directors believed to be the fair value of the assets and business acquired

from Vertol."

Now, when you have fluctuations in stock prices, is that a good kind of situation in which to take the stock price as the basis of fair value?

A That is what they offered in exchange for the assets. Stock.

Q Isn't that the case in all four of these tests? Aren't all four of these tests provided for the case when they give stock in exchange for assets; or what were you writing about if it wasn't that?

THE COURT: That is argumentative.

MR. WINER: Sir?

THE COURT: That is argumentative.

Q Now you have used four methods, and one of them involved fluctuating stock.

Was that the right one to take in this kind of situation?

A Mr. Winer, the letter says that because the stock fluctuated we believe that the value of the stock at the time negotiations were authorized was probably more indicative of what the company thought the value of the Vertol Company was than any other price.

Q I think you have recited correctly what the letter says.

Now I want to ask you whether you think that that was the right method of the four to take in such a situation where the stock was fluctuating?

MR. GILLESPIE: Your Honor, it seems to me we have gone over this and over this --

THE COURT: Yes, we have. We have.

MR. GILLESPIE: If he is asking whether this witness' opinion today is any different than it was in this letter, I think the witness can answer that in two minutes.

THE COURT: Yes, otherwise it is purely argumentative.

Q Now, did you before --

THE COURT: I take it you have withdrawn your question?

MR. WINER: No, I am not withdrawing anything.

THE COURT: Then are you reading from something else? Are you going to adhere to my ruling?

MR. WINER: I assume he had answered, but --

THE COURT: I don't know what that assumption is based on.

Has anything happened since you gave your opinion pointing out the four methods, or possible methods in the valuation of this stock which has led you to change your opinion as to the existence of those four methods or as

to which was preferable in this case?

THE WITNESS: My opinion would be the same today. There is no change in any of the terms or anything else subsequent to the authorization to proceed on the 13th of November.

Q Now before you wrote the letter, which is Exhibit 30, did you read up on any bulletins of the Accounting Principles Board or any opinions of the Accounting Principles Board?

A At that time I am not sure that the Accounting principles Board was in existence, or if it had been it had only been in existence a very short period of time.

Q Are you serious, Mr. Gorans?

A In 1960?

Q Yes, I mean 1960.

A I don't remember exactly when the Accounting Principles Board was established.

Q If I show you opinions back in the '50s, would that help you?

A Yes, if you can show them to me.

Q When was it established? The first one I saw was NO. 24 in 1947.

THE WITNESS: Your Honor, he's talking about the Accounting Research Committee, and the Accounting

Principles Board was not even heard of at that point in time.

THE COURT: Did you hear what the witness said?

MR. WINER: I did.

THE COURT: He said you are talking about something different. He said there were reports of the Accounting Research Board.

Q Didn't I ask you about bulletins or opinions? When did you refer to any bulletins of the Accounting Research Board, if that was its name, or committee?

THE COURT: You have got the name in front of you.

MR. WINER: According to the book in front of me, it says "The Acconting Principles Board."

I will be glad to show it to your Honor.

THE COURT: Is that the way it is printed inside?

Q I show you the front page, and it says "Accounting Principles Board."

A The Accounting Principles Board incorporated the prior accounting research bulletins into its principles some time subsequent to about, I don't know, somewhere around 1960. There was an Accounting Research Bulletin No. 43 issued about, maybe, 1954 or 1955 which kind of

incorporated all principles or all accounting research bulletins up to that time.

Mr. Paul Grady undertook to review all of the accounting principles that were in existence, oh, some time in the late '50s or early '60s, and the Accounting Principles Board then kind of adopted them on the basis of his review. That is the document he is referring to there. There is a document in which they brought all of these things together and put them under one cover and they updated them about every six months.

Q When Mr. Grady brought all these things together, what did he say about how you take stock prices when the stock is listed and the prices are fluctuating? How do you find out which stock price to take?

A It depends on what you are using it for.

Q You are using it to value the acquisition of Vertol?

A There is some reference in there about using price of stock over a period of time.

Q And is that period of time an averaging of before and after?

A It could be.

Q Is it?

A May I see the material you are quoting from?

Q I would like to have your answer and then I should be glad to show it to you.

MR. GILLESPIE: Your Honor, this attorney is asking the witness to state what is in a book that he has in his hands --

MR. WINER: This is an expert on cross-examination --

THE COURT: I don't want argument on it. Mr. Gillespie is right. The witness may look at this book or any book in order to answer.

Do you wish to look at some document?

THE WITNESS: Yes. I can't possibly remember everything that is in that book.

THE COURT: Have you seen a copy of it?

MR. GILLESPIE: No, I haven't seen that book, and I would like to see the book.

MR. WINER: I know you would.

I would like to ask the witness --

THE COURT: Excuse me.

MR. WINER: I want to make a record --

THE COURT: Excuse me a minute.

You read from parts of this book.

MR. WINER: I have not.

THE COURT: Didn't you read from parts of it?

MR. WINER: No, I did not.

THE COURT: Well, your recollection is bad.

MR. WINER: Well, I would like the record re-read.

THE COURT: Oh, stop your nonsense.

MR. WINER: Sir?

THE COURT: You have the book in your hands now?

MR. WINER: Yes, I have.

THE COURT: Mark it for identification.

MR. WINER: It is not my book, and I would like a loose marker --

THE COURT: I don't care whose book it is.

MR. WINER: I would like a loose marker put in.

THE COURT: Well, put a loose marker on it. Whose book is it?

MR. WINER: It is Mr. Pivar's book.

THE COURT: That is the expert?

MR. WINER: Yes.

THE COURT: I know Mr. Pivar would be only too happy to turn it over to the Court, and we can get any copies we want.

MR. WINER: He asked me to return this one to him, your Honor.

THE COURT: What is so mysterious about this

this?

MR. WINER: I am wondering myself what is so mysterious, why this expert cannot answer the question --

THE COURT: Oh, please stop all this nonsense. You would be better off to just try this case and stop these histrionics.

(Marked Plaintiffs' Trial Exhibit 7 for identification.)

THE COURT: Let me see that.

This is Volume No. 2, issued by the American Institute of Certified Public Accountants.

It says "Volume No. 2, issued by the American Institute of Certified Public Accountants. APB accounting principles."

It says, Accounting Principles - original pronouncements as of February 1, 1971."

MR. GILLESPIE: Does it bear the date 1971, your Honor, this particular book?

THE COURT: Yes.

Full text of accounting research bulletins issued by the committee of accounting procedures. That is in here, just as the witness says it is.

What is so mysterious about this book?

MR. WINER: I don't know anything mysterious about it. I would like to ask the witness, who is an expert, what it says about --

THE COURT: Can you testify as to what a particular principle says, without looking at the book to refresh your recollection?

THE WITNESS: I am not sure of the question. I think I have to look at that to be safe.

THE COURT: He says he would prefer to look at it.

Now if you want to ask him about any particular question you can refer to it.

MR. WINER: I would prefer to ask this question,

put it on the record, and then we can get away from this, or stay with it, as your Honor chooses.

THE COURT: To get away from it would be better.

MR. WINER: I think so too.

BY MR. WINER:

Q I want to ask you what the principles of the Accounting Principles Board provide when you are using a particular date for determining the value of stock given in an acquisition, and the stock which you give is of fluctuating value?

A I can only assume what you are asking provides for using something other than a specific date, and I told you earlier that under certain circumstances --

THE COURT: What date would you use where it was a fluctuating price?

THE WITNESS: Well, your Honor, it depends so much on what kind of a transaction you are involved with. If this company were being acquired on the issuance of stock in an open offer where people are turning in stock every day over a period of months, then I think you would have a hard time picking one date and saying that was the appropriate date.

But that is not the case here. That is why I have problems when he starts asking me to pin down something and be very specific on it, because the accounting rules are not

that rigid.

Q If I understood or heard correctly, you said this is not a case where a specific date was picked --

A No, I said this was a case where a specific date was picked.

Q Now, then, let me ask you this question:

You are acquainted with accounting research Bulletin 43, and it was replaced, was it not, by 48?

A I am not sure of that.

Q Do you --

THE COURT: Do you want to refresh your recollection on that?

THE WITNESS: He is talking about the numbers of these bulletins, and they keep reissuing them and they change all the time.

Q Let me ask you this: Is there any bulletin relating to what is called Business Combinations, I believe, by the accountants? Is there any bulletin which allows you to pick a date prior to the coincidence of two factors, agreement on the terms and a public announcement of the principal terms? Is there any bulletin anywhere, any place, which permits you to take a date for acquisition costs where those two factors have not been heard?

A I don't know why those two factors should only be

considered --

Q I asked you whether or not there is any bulletin or --

THE COURT: You may finish your answer.

THE WITNESS: There is a bulletin on business combinations. It is several pages long, and I can't quote to you everything that is in it.

MR. WINER: No further questions.

MR. GILLESPIE: Your Honor, could we have just two minutes?

THE COURT: All right.

(Pause)

MR. GILLESPIE: No further questions.

(Witness Excused.)

THE COURT: Are you resting now?

MR. GILLESPIE: We are still, your Honor, in the defendant's case?

THE COURT: Yes.

MR. GILLESPIE: I have no more witnesses.

I have two offers of evidence that I would like to make. One is the defendants' requests for admissions which were dated July 14, 1971, to the extent that they have been admitted by the plaintiffs.

I would like to offer those in evidence to the

extent that they have been admitted by the plaintiffs.

THE COURT: That is the one with all the statistics in it?

MR. GILLESPIE: It has statistics; it has the newspaper clippings and that material. I would offer that in evidence.

The other --

THE COURT: Wait a minute.

Is there any objection?

MR. WINER: I have no objection to it.

THE COURT: Received in evidence.

MR. GILLESPIE: Now I would offer into evidence the paragraphs of the agreed statement of facts to which the defendants have not objected. There has not been a formal offer of those paragraphs in evidence. I now offer those and the exhibits that are connected with those paragraphs to which we did not object.

THE COURT: I understood that all the agreed statement of facts were received in evidence by me.

MR. GILLESPIE: If that is the case, then there would be no problem.

THE COURT: Which would include the exhibits.

MR. GILLESPIE: Very good.

THE COURT: And I understood that they were to be

received in evidence in toto, both by the plaintiffs and the defendants, subject only to objections as to relevance and materiality. There has been no objection to relevance and materiality here, and, frankly, if there were, I would overrule it, because they seem to me relevant. How material they are, I don't know. I have compared them one with the other. Some of it is repetitious, but, in any event, we don't have a jury here, and I don't see that anybody is prejudiced.

MR. GILLESPIE: All right. If that is your ruling.

THE COURT: Are you satisfied with it?

MR. GILLESPIE: I am satisfied.

THE COURT: Are the plaintiffs satisfied with it? If not put your objection on the record.

MR. WINER: Now --

THE COURT: Are the plaintiffs satisfied with it?

MR. WINER: Sir?

THE COURT: With my ruling?

MR. WINER: Yes.

MR. GILLESPIE: If that is the case, your Honor, the defendants rest.

MR. WINER: Your Honor, I had thought that the requests and admissions, as part of the file, did not have to be offered again in evidence.

THE COURT: They don't have to. They have already been received.

MR. WINER: I am talking about the plaintiffs' requests for admissions and the defendants' answers thereto. I think what your Honor has received --

THE COURT: I have considered them all in evidence.

MR. WINER: Thank you, your Honor.

THE COURT: They are in evidence.

MR. WINER: Thank you.

There is one tiny matter.

Mr. Gillespie said the other day that he would take my word for it that Mrs. Finn still owned the $3,000 worth of Boeing bonds, provided I showed him the bonds.

Now, I didn't bring them in today, but I will make it available to you at your office whenever you like.

Is that agreeable?

MR. GILLESPIE: That is fine.

THE COURT: Both sides rest?

MR. GILLESPIE: Both sides rest.

THE COURT: All right, now the case is mine for decision.

Now, it was suggested on Friday, if my recollection is right, that counsel submit proposed findings and conclusions, together with any memorandum you want, and

after I went over that, then I was going to hold a hearing and see if I wanted argument.

I did not fix a schedule. We are going to fix a schedule, and you men were to come in today with some proposed tentative schedule. We discussed a tentative schedule. I don't know whether we fixed it definitely.

Now, have you consulted with one another about it?

MR. WECHSLER: Your Honor, you indicated that you thought about the middle of December --

THE COURT: The middle or latter part of December.

MR. WECHSLER: I would like to suggest that we have until the end of December to submit proposed findings of fact or any briefs.

THE COURT: All right, I am not going to rush you. I will give the defendants two weeks after.

Now, what date do you want? Let us make a notation on this so we know where we are heading.

MR. GILLESPIE: The end of December would be Friday the 29th.

MR. WECHSLER: Your Honor, could we request --

THE COURT: Just a minute. I don't like to make it on Friday on the eve of the holiday. Either make it after New Years or before.

MR. WECHSLER: How about January 5th, your Honor?

That is Friday.

THE COURT: January 5th will be all right. By January 5th.

You are going to give the defendants a copy?

MR. WECHSLER: Your Honor, I had assumed that plaintiffs and defendants would both be required to submit on the same date. The evidence is all in, and we can both prepare findings of fact simultaneously.

THE COURT: You can if you want. Maybe that would be the better way.

Would that be all right with you, Mr. Gillespie?

MR. GILLESPIE: January 5th for the plaintiffs' findings?

THE COURT: Well, better make it the 12th.

MR. GILLESPIE: Briefs on the same day, your Honor?

THE COURT: Yes.

MR. GILLESPIE: Plaintiffs' findings on the 12th?

MR. WINER: I understood your Honor had said that was for both sides; am I incorrect?

THE COURT: I think it would be better if everybody submitted at that time. Both findings and conclusions to be submitted by January 12, 1973.

MR. GILLESPIE: Your Honor, if we are to exchange

findings, which is agreeable with me, I wonder whether it would not be desirable to have available to both sides the opportunity within a week's time to make a comment with regard to the other's submission?

THE COURT: It is all right with me. I will give you ten days after that. The 12th is what day of the month?

MR. GILLESPIE: Friday is the 12th, and if we could have until the 24th --

THE COURT: The 24th, all right. All replies on the 24th.

MR. WECHSLER: Is it my understanding that those replies would be with regard to any comments regarding the proposed statement of facts as well to the briefs?

THE COURT: Yes, that is what it is supposed to be.

All right, thank you very much. I appreciate all your help.

- - - -

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross=
Gerald E. Gorans (Resumed)	325			

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EXHIBIT P-1 - LETTER DATED MARCH 2, 1966 FROM THE BOEING COMPANY TO CHASE MANHATTAN BANK

March 2, 1966

1-9500-1-40

Chase Manhattan Bank,
One Chase Manhattan Plaza
New York, New York

Attention: John Howard, Corporate Trust Officer

Gentlemen:

I am enclosing a certified copy of a resolution of our Board of Directors regarding the redemption of our 4½% Convertible Subordinated Debentures and a certificate identifying the officer's mentioned in this resolution.

In accordance with the terms of the resolution and the indenture dated July 1, 1958 between Boeing Airplane Company (name changed to The Boeing Company) and The Chase Manhattan Bank, we would like to redeem all of the outstanding debentures. The redemption date we have selected is April 8, 1966. The redemption notice should be published in the Wall Street Journal (all editions) on March 8 and 18, 1966. I understand you will make arrangements to have the notice prepared and published, and that we will have an opportunity to review a draft before publication.

The Company is not now in default in the payment of any Senior Indebtedness, and the redemption of the convertible subordinated debentures will not result in a default in any covenant contained in any indenture or other instrument pursuant to which Senior Indebtedness is outstanding.

Yours very truly,

THE BOEING COMPANY

Dean D. Thornton
Treasurer

Enclosures

Ex 2 - Deposition of Harold W. Haynes

EXHIBIT P-2 - DEPOSITION OF HAROLD W. HAYNES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

WILLIAM R. VAN GEMERT, et al., :

Plaintiffs, :

-against- :

THE BOEING COMPANY, et al., :

Defendants. :

----------x

Deposition of defendant THE BOEING COMPANY, by HAROLD W. HAYNES, taken by plaintiffs pursuant to notice and stipulation dated April 4, 1969, at the offices of Messrs. Davis Polk & Wardwell, 1 Chase Manhattan Plaza, New York, N. Y. 10005, on April 9, 1969, at 10:00 a.m., before Kenneth Sofronski, a Shorthand Reporter and Notary Public of the State of New York.

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BY: DAVID E. WAGONER, ESQ.,
Of Counsel

ALSO PRESENT:

MRS. HANNA HALE,
35 Cornell Drive,
Great Neck, N. Y.

oOo

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that the sealing, filing and certification of the within deposition be waived; that such deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the officer before whom said deposition is taken.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED that counsel for plaintiffs shall furnish a copy of the within deposition to counsel for defendants, without cost.

oOo

MR. GILLESPIE: I would like to make a brief statement about our position with regard to the depositions of Mr. Haynes and that of Mr. Harold Olsen which

will follow Mr. Haynes. We plan to follow very closely the answers to interrogatories because I assume you just will be asking questions which go beyond the answers to interrogatories as to events and facts and occurrences that may have been observed by the witnesses, but if from time to time we feel that you are on the subject of an interrogatory, we may interpose an objection under those circumstances. I assume your examination will be to the outside items of the interrogatories and the answers.

MR. WINER: I suggest that we complete those things as we come to them.

H A R O L D W. H A Y N E S, called as a witness by plaintiff, having been first duly sworn by the Notary Public (Kenneth Sofronski) and stating his residence as 2 Holly Lane, Mercer Island, Washington, testified as follows:

EXAMINATION BY MR. WINER:

Q Mr. Haynes, what position do you hold in The Boeing Company?

A I am vice-president of finance.

Q Were you with The Boeing Company in June and July of 1958?

A I was.

Q What was your position at that time?

A I was assistant controller.

Q How long have you held your present position?

A Since 1961.

Q At the time in 1966 when the 4½'s of 1980 were called, were there any other bond issues of Boeing outstanding?

A There was outstanding a straight debt issue, a public debt issue.

Q What was the title of that issue?

A It was five per cent of 1958.

Q You say of 1958?

A I would have to recheck that but I think that is correct. In 1958 there was a straight bond issue, a straight debt issue.

Q What was its maturity?

A I would have to check that. I did not participate in that.

Q Was that issue still outstanding at the time you made the call in 1966?

A Yes, sir, and I think this is all in the annual reports of the company, copies of which you have.

Q Is it still outstanding?

A A portion thereof is still outstanding. Again,

this information is in the annual reports of the company.

Q What I would like to know is whether the 4½'s of 1980 was the only issue called by Boeing prior to financing steps as are described in the answers to the interrogatories as occurring in 1966 and following.

MR. GILLESPIE: Do you mean at any time?

MR. WINER: No, I mean in 1966. Let me put it simply.

Q Was the 1980 issue that is involved in this case the only issue that was called by Boeing at or about 1966?

A That is correct.

Q When, Mr. Haynes, did you first have a conversation about or thoughts about the calling of the 4½'s of 1980?

MR. DOBBIN: I object to the question. I don't know whether it is, I doubt that it is, but, in any event, I suggest we go on.

MR. GILLESPIE: Off the record.

(Discussion off the record.)

MR. WINER: Among other things, let me say I think it is going to be difficult if you are going to try to exclude every single item which is mentioned in the interrogatories. We want something

that will be readable by a court.

MR. GILLESPIE: I just want to keep close enough so we really don't get into a repetitive operation.

MR. DOBBIN: I direct your attention to page 7, Interrogatory 5, and the answers thereto which I think answers the question you asked.

MR. WINER: I am not satisfied that those are sufficient, Mr. Dobbin.

(The question was read.)

MR. GILLESPIE: You may answer.

A I guess I would have to have a clarification on the question,as is indicated in the answer to the interrogatory, there were conversations prior to 1966, namely, back in the early 1960's. Is that what you are referring to?

Q If it was earlier than 1960, I would like to know when.

MR. GILLESPIE: You mean earlier than the ones he just mentioned in 1966?

A Again, I think that has been produced -- we have documents on that subject.

MR. GILLESPIE: I believe you just testified that there were some conversations in 1960; is that

correct?

THE WITNESS: I would have to refresh my memory. I believe there are a couple of documents that relate to the particular conversations, I think it was either 1960 or 1961.

Q Let me say to you that I have no knowledge of any such conversations and, if you have such documents, I would like to see them and have you tell us about them.

MR. GILLESPIE: We are looking for the documents.

Off the record.

(Discussion off the record.)

MR. GILLESPIE: Mr. Winer, Mr. Haynes has before him now two documents which are stapled, one dated June 28, 1961 and the other dated July 20, 1961, which were produced to the plaintiffs as Item 37, as parts of Item 37.

MR. WINER: May I see that? Perhaps we can save some questions.

Q Mr. Haynes, I call your attention to page 8 of the memorandum headed, "Draft, 6/28/61," which has just been produced by your counsel and which I understand is part of Item 37 in the discovery of books and documents, and I call your attention to the statement which reads as

follows:

"This opinion (referring to an opinion of Harriman & Ripley) was based primarily on the fact that potentially the redemption would remove possible dilution and would indicate a degree of confidence on the part of the management as to the future;"

and to the statement in the second paragraph below that:

"This would not only defeat our basic objective of avoiding dilution but would also result in our having to capitalize the unamortized debt expense which, at May 31, 1961, amounted to approximately $425,000."

What was your participation, if any, in the drawing of the memorandum from which I have just read?

A It is my recollection that I did draw the memorandum or participate in it or was responsible for the drawing of the memorandum.

Q When you said that it was your basic objective to avoid dilution, what did you have in mind, as far as the point of view from which this was a basic objective?

MR. GILLESPIE: I object to the question. If the witness understands it, all right, but if he doesn't, perhaps you might rephrase it.

Before we get any further in asking questions about this memorandum, it might be desirable to mark it for identification first so at a later time we know exactly what we are talking about.

MR. WINER: Mark it Plaintiffs' Exhibit 1 for identification.

(Draft of 6/28/61, entitled, "Four and one-half per cent subordinated convertible debentures," marked Plaintiffs' Exhibit 1 for identification, as of this date.)

Q What did you mean when you said the basic objective was to avoid dilution?

MR. GILLESPIE: Perhaps the witness would like to look over the entire memorandum before answering that.

MR. WINER: I am quite agreeable to that.

A I think if you read the total paragraph on page 8, the total section of other factors, it is self-explanatory what I meant.

Q Would you mind explaining it to me, because I am not all that clear.

MR. GILLESPIE: Perhaps you might read into the record what you think is the explanation.

THE WITNESS: On page 8, under the section of "Other factors," it states, "A risk that should be

fully understood certainly is stock price levels during the periods and the dates of the call notice to the redemption date. If during such periods the market for Boeing moved up to a point fairly close to the $52.25 redemption price, conversions could be forced."

Q I am still too thick to understand it. I would like to know what you meant in plain English about the basic objective to Boeing to avoid dilution.

A I think if you read the overall memorandum, the subject of it is a call of the debentures at a point in time when the market price was below -- the redemption price was above the market price of the stock.

Q I read that and, therefore, what you are saying, and I don't wish to say it for you, except I can't seem to get you to tell me -- I would like to know if what you are saying is if the market price was below the redemption price that conversion or redemption or both would result in a dilution.

MR. GILLESPIE: I object to the question as being argumentative and incomprehensible.

Q What would cause a dilution?

A The conversion of the debentures into capital stock.

Q In what way would that be a dilution?

A It would increase the number of shares of capital stock outstanding.

Q And your basic objective, then, was to avoid the increase in the number of shares outstanding?

MR. GILLESPIE: You mean at that time?

MR. WINER: At that time.

A At that time, this is a memorandum that I prepared on the overall subject of the status of the convertible debentures at that particular point in time which discusses the possibilities of calling the debentures at a point in time when conversions would have been nominal, if the market price was under the redemption price.

Q What would have happened if the issue was called at a time when the market price of the stock was below the conversion price?

A If the market price of the stock was below the conversion price, the debenture-holder could look at the two values and presumably they would have redeemed as opposed to converting.

Q Then what kind of dilution would there have been?

A I would have to go back and check the figures as to the number of shares outstanding.

Q There would have been none if they redeemed,

if there --

MR. GILLESPIE: I object to the question as argumentative.

Q I thought you just stated that there would have been redemption rather than conversion; am I correct?

MR. GILLESPIE: Again I object to the question. I think it is hypothetical and you are arguingwith the witness. He has made clear what his meaning was in regard to that phrase. I think we had better move on to something else.

MR. WINER: I will accept your explanation. If he has made it clear to you, he has not made it clear to me. Do you wish to explain?

MR. GILLESPIE: I do not.

MR. WINER: Then I will ask again:

Q What did you anticipate when you wrote that memorandum would happen if the bonds were called for redemption at a time when the stock was selling below the redemption price?

A I think I already answered that question that the bonds would be redeemed.

Q If the bonds would be redeemed, in what respect would there be a dilution?

A There would be no dilution.

Q What was your anticipation when you stated in the draft that there would be some consequences if, in the periods between the call and the redemption dates, the stock rose almost to the redemption price?

MR. GILLESPIE: Do you understand the question?

THE WITNESS: What was my anticipation? Again, I think the memorandum is quite clear on that point.

Q Would you please tell us?

A I will read you the sentence.

"If during such periods the market for Boeing moved up to a point fairly close to the $52.25 redemption price, conversion could be forced."

Q Was it, therefore, your purpose to avoid conversions?

MR. GILLESPIE: I object to the question.

MR. WINER: I press it. If you wish to have an answer or not, that is up to you.

MR. GILLESPIE: I wonder what part of the stipulation you are examining under, Mr. Winer.

MR. WINER: I am examining with respect to the call or redemption and with respect to the consideration of notice given to stockholders and

the purposes therefor.

MR. GILLESPIE: In 1966?

MR. WINER: 1966; if their motives were different in 1961, the witness can say that.

MR. GILLESPIE: I object, and advise the witness not to talk about the situation in 1961. We have had enough of background.

MR. WINER: All right. When I say, "All right," I say until a ruling.

I will ask that the memorandum produced by defendants' attorneys, dated July 20, 1961, be marked as Plaintiffs' Exhibit 2 for identification.

(Memorandum dated July 20, 1961, marked Plaintiffs' Exhibit 2 for identification, as of this date.)

Q I show you Plaintiffs' Exhibit 2 for identification, and ask you whether you saw it at or about the time it was written.

A I don't recall.

Q Who was Mr. Prince?

A He was vice-president of administration and secretary of the company, of The Boeing Company.

Q In your table of organization, was he a superior to you as controller or assistant controller, or was he in a different division?

A He was not superior to me in the sense that I did not report to him.

Q Was there any further discussion that you know about with respect to the redemption of the 4½'s of 1980 between July 20, 1961 and the year 1965?

A To my recollection, there was not.

Q Was there some discussion with respect to the redemption of these debentures in the year 1965?

A I cannot recall specifically when the first discussion with respect to the call of the debentures occurred.

Q With reference to the meeting date of the board on February 28, 1966, how much time elapsed between the first discussions and that meeting?

MR. GILLESPIE: I assume you mean approximately?

Q Approximately.

A The first discussions between any parties?

Q Yes, sir.

A It is indicated in the answer to the interrogatory. There were preliminary discussions in January and February. I cannot be precise as to when those discussions did occur.

Q I call your attention to the answer to the interrogatory which is before you Interrogatory No. 5, and it says, "Prior to 1966 there were various conversations."

Does that refer to the 1961 talks or does that refer to conversations in 1965?

A It refers to the 1961 discussions, specifically, and to the best of my recollection, as I indicated earlier, there were no further conversations until we started discussions with respect to the call that occurred in 1966.

Q So those discussions were in January and February of 1966; is that correct?

A To the best of my recollection, yes, sir.

Q According to the answer to Interrogatory No. 5, the preliminary meetings were held by you and Mr. Allen; is that correct?

A That is correct.

Q Would you tell us the substance of those discussions?

A As indicated in the answer to the interrogatory, I did, during January and February, have a number of conversations with Mr. William M. Allen, the president of The Boeing Company, which discussions covered generally the potential financing requirements that faced the company. In connection with those discussions, my recollection is that I did indicate that if we were to proceed with a financing program, that consideration should be given to the call of the outstanding four-and-a-half per cent convertible

debentures, if equitable financing was to be involved in that program.

Q Did you say why?

A I do not recollect the details of those discussions, but if the reasons for the call were discussed, they would be in line with the answers that have already been given to you in the interrogatories.

Q Before calling your attention to any specific matters which might have arisen, I would like for you to give us your best recollection of the substance of the conversation that you had with Mr. Allen as to why the 4½'s have been or should be called.

A As I indicated in answer to an earlier question, the principal subjects of my conversation with Mr. Allen involved the overall financing requirements of the company. During the course of those discussions, it is my recollection that I probably mentioned it would be desirable to call the four-and-a-half per cent convertible debentures that were outstanding, if equitable financing was to be required. I do not recall specifically whether I went into a detailed discussion with Mr. Allen at that time with respect to the reasons for thatconclusion.

Q Had you some reasons for it?

A As I indicated in an answer to an earlier question,

I had those reasons and they are set forth in answer to one of the interrogatories.

Q Would you please tell us what the reasons were?

MR. GILLESPIE: I think if they are set forth in the answers to the interrogatories --

MR. WINER: Would you please point to the interrogatory so that we, at least, have that answer?

A It is included in the answer to Interrogatory No. 6-D.

Q Mr. Haynes, I should like for you to either re-read your answer to 6-D, or to tell us that you have re-read it and are familiar with it, and I should like to know whether that contains all of the reasons in your mind for the calling of the 4½'s of 1980.

MR. WINER: May we understand that from here on, when we talk about the debentures, we are talking about the 4½'s of 1980?

MR. GILLESPIE: Agreed.

A I think the answer to that question is yes.

Q Was there any consideration given to any restrictive clauses in the debentures or in the indenture underlying these debentures with respect to further financing?

MR. GILLESPIE: I object to the form of the

question. You mean any consideration by Mr. Haynes?

MR. WINER: Yes, by Mr. Haynes or by Mr. Allen in his conversations with Mr. Haynes.

MR. GILLESPIE: Perhaps, to make the question more understandable to Mr. Haynes, you might tell him the restrictive covenance that you are referring to.

MR. WINER: I would like to know his recollection rather than mine. I have restudied. I would like to have him testify.

MR. GILLESPIE: I object to the form of the question.

MR. WINER: I don't think there is anything wrong with it.

Q Were there any restrictions in the indenture which affected your thinking about the call of the debentures?

MR. GILLESPIE: Again, Mr. Winer, I think you are using the words"restrictive covenants." I think you have to identify more clearly what you are talking about before you can expect him to give an accurate answer to the question.

Q Were there any limitations on any of the debt financing by Boeing expressed in the indenture?

MR. GILLESPIE: For these debentures?

MR. WINER: Yes.

MR. GILLESPIE: Would you like that document before you?

THE WITNESS: I think so. The document which is in the record.

MR. WINER: I have no objection to him seeing the document, but I am trying to find out about the conversations about that testimony, and I would like to know whether he has any recollection at this time that there was in his mind at that time limitations on financing.

MR. GILLESPIE: I have no objection to your asking that question after the document is in front of the witness so we can look at it first.

MR. WINER: Unless I am mistaken about the Rules of Evidence, and this is quite a possibility, I think that he should first state whether he has a recollection and, if he says he has none, then he is entitled to look at the document to refresh his recollection.

MR. GILLESPIE: I think you must first lay a foundation as to the items you are talking about, and you have not done that. Once you do that, I think you are entitled to have his recollection.

MR. WINER: I will state the question once more, and then you handle it your own way.

Q At this time do you recall whether there were any limitations in the indenture underlying the debentures with respect to other debt financing? Have you any present recollection of such a limitation?

A My recollection is that there are provisions in the indenture with respect to other debt financing.

Q Now I will ask you what I asked you before. Do you know whether those limitations were in your mind in January 1966?

MR. GILLESPIE: Are you asking him did he know of them in 1966?

MR. WINER: I think the reporter should re-read it.

(The question was read.)

MR. GILLESPIE: I object to the form of the question. I have no objection if you ask did he know of them at that time.

Q Did you know of them at that time?

A I knew that there were covenants in the indenture with respect to the level of debts permissible.

Q Did that knowledge enter into your consideration of whether the issue should be called?

A At this point in time, I can't recall specifically whether that knowledge was involved in my discussions with Mr. Allen. I am sure that, knowing of the covenants, it would have been a factor, although not specifically discussed with Mr. Allen.

Q What factor would it have presented?

A Just awareness that those covenants did exist.

Q How would that affect the financing that you were talking about with Mr. Allen?

A Since the discussions with Mr. Allen were very preliminary and general, it probably did not affect the discussions with him.

Q Was there any discussion about calling the other outstanding debt issue which still remains outstanding?

A No, there was not.

Q What was the price of Boeing stock at the time that you had the discussions with Mr. Allen in January 1966?

MR. GILLESPIE: Mr. Winer, might I suggest that you try to fix the date of the discussions and then the record will show what the price was?

MR. WINER: We can't find the price by an approximation. If you want to fix the dates, we will have it your way, but we have to do it one way or the

other.

MR. GILLESPIE: Maybe you should ask him if he knows the dates.

Q What were the dates on which you spoke with Mr. Allen?

A As I indicated in an answer to an earlier question, I do not recall specifically what dates those meetings occurred on.

Q According to the answer in the interrogatories to which you referred, No. 5, they were held in January 1966; what was the price range approximately of the stock at the time you were conducting these talks with Mr. Allen in January of 1966?

MR. GILLESPIE: If you know. I think we have the record on this.

A I would rather refer to the record.

MR. WINER: I have no objection.

MR. GILLESPIE: May we take a brief recess?

(Whereupon, a brief recess was taken.)

A The answer to the open question in referring to the financial chronicle, it is indicated that the range of the price of Boeing stock in January was from approximately $130 to $172 a share.

Q What was the price on January 31, 1966?

A We have only the high and low on that date, which is a range of $164 to $172. The close is not indicated in the commercial and financial chronicle.

Q In the talks which you had with Mr. Allen, did you refer to the price of the bonds in the light of the stock price?

MR. GILLESPIE: You mean the debentures?

MR. WINER: Yes.

A It is my recollection that I did not.

Q What conversation was there about the debentures with respect to the conversion and redemption, if any?

A As I have indicated in answering your previous question, to the best of my recollection, the only conversation with respect to the debentures was that we should consider calling the debentures as a step in an overall financing program involving equity.

Q Mr. Haynes, I wish you would take your time and give us the fullest recollection that you have of what you said to Mr. Allen and what Mr. Allen said to you with respect to the debentures.

A I have already given you my fullest recollection and, to the best of my knowledge or to the best of my recollection, Mr. Allen did not say anything with respect to my suggestion that we should give consideration to calling

the debentures.

Q I will ask you one more question on that. Was anything said about dilution of the stock by conversion of the debentures?

A No.

Q Was anything said as to urgency of refinancing?

A Will you define "refinancing"?

Q Any kind of issuance of a new security.

A As I have indicated in answer to an earlier question, there were general discussions as to the potential magnitude of our financial requirements. The discussions at that point in time were general but did include the possibilities of an equity issue.

Q Was anything said as to whether it was urgent, that it be done immediately?

A To the best of my recollection, we talked in terms of the financial requirement, the potential timing of those requirements, but did not specifically discuss any kind of a financing schedule.

Q Did you say to Mr. Allen or did Mr. Allen say to you that this must be done immediately, the call of the debentures?

MR. GILLESPIE: I object to the question as being repetitious and advise the witness not to answer.

MR. WINER: On that ground I will accept it, if you feel that the witness has fully answered it, Mr. Gillespie, but then I think we should take your statement that he has answered it as part of the answer.

MR. GILLESPIE: I think he has answered that question by answers to previous questions.

Q On January 31, 1966, according to the answer by you to Interrogatory 5, there was a preliminary review of possible financing plans at the board of directors' meeting held in Seattle. Were you present at that meeting?

A Yes.

Q Were you then a director of the company?

A No.

Q Did you make a presentation with respect to the possible financing plans?

A No.

Q Who did make the presentation, if there was one?

A It is my recollection that there was no presentation as such. That Mr. Allen did discuss, in general terms, our current programs, the requirements with respect to those programs. He did discuss the potential programs, especially the 747, and did indicate to the board that the potential financing requirements with respect to our total

operation were such that we had under consideration an overall financing program.

Q Did Mr. Allen mention the debentures?

A To the best of my recollection, there was no specific discussion of the detailed financing program.

Q I would like to know whether he mentioned the debentures.

A I cannot specifically recollect whether he did or didn't.

Q Do you recall whether anyone else at the table mentioned the debentures?

A I cannot recall whether anyone did or did not.

Q Have you any knowledge that any director, other than Mr. Allen, was aware as late as January 31, 1966 of consideration of a call of the debentures?

MR. GILLESPIE: Excuse me. Would you repeat that?

(The question was read.)

MR. GILLESPIE: Do you understand the question?

THE WITNESS: Yes.

A As I indicated in answer to a previous question, I do not recall specifically whether the subject of the debentures was mentioned by Mr. Allen. Very possibly it

was.

Q Have you a recollection of any other director discussing the subject outside of the meeting of the board on January 31, 1966?

MR. GILLESPIE: You mean prior to January 31st?

MR. WINER: On or prior.

A I have no specific recollection.

Q According to the answer to Interrogatory No. 5, on February 18, 1966, a meeting was held in which you participated.

MR. WINER: Off the record.

(Discussion off the record.)

Q Is any of the other people named in that answer as attending the meeting associated with Boeing other than you?

A No.

Q On February 24, 1966, there was a meeting among you, Mr. Thornton and Mr. Olsen, at the Boeing offices. What was the subject of that discussion?

A It is my recollection that at that meeting we discussed tentative time schedules for a financing program or the initial steps of an overall financing program.

Q What was said with respect to the debentures?

A Included in the discussions, was that the call of the debentures should be an integral step in such a financing program.

Q You said that you talked about a schedule; what was said with respect to the debentures and the schedule?

A In connection with the preparation of the schedule, the dates were included in the tentative schedule with respect to the timing of the notice and the redemption period.

Q What was said with respect to the debentures?

A Do you mean by that what was said with respect to dates?

Q Yes.

A I think it is my recollection that the dates that were discussed are the same dates that appear in the schedule, the tentative schedule that Mr. Olsen discussed at that February 23th meeting of the board.

Q Have you any recollection of what those dates were?

A As I recall, the dates were for publication -- this is in the tentative time schedule that was being discussed. It was for publication on March 7th or 8th with the redemption on April 6th.

Q Have you a copy of the memorandum which Mr. Olsen

prepared or had with him at the February 28th meeting?

MR. GILLESPIE: I think this has been produced to you people.

MR. WINER: Off the record.

(Discussion off the record.)

Q Was any memorandum made by you or by anyone in your presence with respect to the meeting of February 24, 1966?

A Do you consider a draft of a time schedule a memorandum?

MR. WINER: I would, yes.

A It is my recollection that it would be possible that Mr. Olsen, in connection with that meeting -- we did develop a tentative time schedule that was further refined for his use in his presentation to the board on February 28th.

Q Have you a copy of that memorandum, Mr. Haynes?

A I think, as indicated, of the February -- I do not have.

MR. WINER: Is there such, Mr. Gillespie?

MR. GILLESPIE: I think we can locate a copy of that memorandum.

MR. WINER: Could we, before the conclusion of this deposition, have that?

MR. GILLESPIE: Yes.

Q Mr. Haynes, was there any discussion in this three-way conversation as to protection for such debenture-holders as might not receive notice by mail of the redemption?

A To the best of my recollection, there was not. We were just talking about the schedule.

Q Between February 24th and February 27th, which is the date of the next meeting according to the answer to Interrogatory No. 5, was there any consideration given by you personally or by you in conversation with others as to possible losses to debenture-holders who did not receive notice?

MR. GILLESPIE: I object to the form of that question. I think that you have got to lay a foundation before you put that question. It assumes various states of fact. It assumes a debenture-holder not receiving notice -- we, of course, take the position that debenture-holders did receive notice by reason of carrying out the steps called for in the indenture. I understand you say there are cases where they did not, in fact, receive a notice, but when you put a question as you did just now, without laying a proper foundation, it is subject to different interpretations

when it is answered.

Q Did you consider or discuss at the meeting on February 24th or at the meeting of February 27th or at any times in between the form of notice which would be given to debenture-holders?

A No.

Q Was Mr. Thornton at that time a director?

A No.

Q Was Mr. Olsen at that time a director?

A No.

Q On February 27, 1966, when you met with Mr. Olsen and Mr. Allen, were the debentures discussed?

A It is my recollection that those discussions involved a review of the resolutions that Mr. Olsen had drafted for presentation at the February 28th meeting, and very possibly the time schedule that he was also going to present at the February 28th meeting, which tentative time schedule did have the dates referred to earlier in it.

Q Was there any discussion, so far as the time schedule was concerned or otherwise, of the debentures?

A To the best of my knowledge, there was no specific discussion with respect to the debentures.

Q Do you know whether Mr. Allen participated in any discussions with respect to the redemption of the

debentures other than those you have told us that you had with him in January of 1966, the meeting of the board of directors on January 31, 1966, and the meeting of February 27, 1966?

MR. GILLESPIE: Mr. Winer, you may recall Mr. Haynes said that he could not recall whether the debentures were discussed at the January 31, 1966 meeting.

MR. WINER: I realize that. I am now asking about any other meetings. Any meetings, excluding those dates.

A I cannot specifically recall any other meetings, but there very well could have been other conversations with respect to the financing program or the subject of the call of the debentures to have been involved.

Q As far as your participation is concerned, have you stated the only meetings of which you have a recollection?

A That I have a specific recollection, yes.

Q As vice-president in charge of finance, was there anyone, other than the board of directors and Mr. Allen, to whom you had to report on this subject of the debentures?

A No.

Q Did you, in any private conversations, discuss the

redemption of the debentures prior to the board meeting of February 28, 1966?

MR. GILLESPIE: I object to the form of the question. I think it is not clear what you mean by "private conversations."

MR. WINER: Then let's strike out the word "private," and make it any kind of conversation with any other member of the board of directors.

A My recollection would be that it is possible that it was discussed with Mr. Willis Campbell, who was a director.

Q Is that your whole answer?

A Yes.

Q Is Mr. Campbell also an employee or officer of the company?

A No, he is an outside director.

Q Where does he reside?

A In Seattle.

Q You have, I gather, from your use of the word "possible," that you have no specific recollection of a discussion with him; is that correct?

A I could not specifically indicate the date or the time, but my recollection is that I very possibly did have a discussion with him with respect to the financing program,

which would include the call of the debentures.

Q I want you to exclude the word "possibly," and I would like to know whether you have a recollection that you did or a recollection that you didn't or no recollection.

A On the basis of the way the question is phrased, I would say I have a recollection that I did.

Q What is your recollection as to your discussions with Mr. Campbell?

A Again, there were general discussions, probably on the telephone, and because I was discussing with him the matter of overall financing requirements, it is my recollection that I undoubtedly mentioned the call of the debentures.

Q What is Mr. Campbell's business, if any?

A He is chairman of the board of Safeco Insurance Company.

Q When did these conversations take place?

A They would have taken place in February, 1966.

Q Did you discuss with Mr. Campbell the form of notice or the time schedule of notice to be given to debenture holders?

A No.

Q Was any memorandum of the conversations which took place prior to February 28, 1966, circulated to the

directors on or before February 28, 1966?

A No.

Q Was any information furnished to the directors, so far as you know, prior to February 28, 1966, with respect to the redemption of the debentures other than what you have already told us?

A No.

Q Were you present at the meeting of February 28, 1966?

A Yes.

Q Did someone present the new financing plans to the board on that date?

A When you say "new financing plans," what are you referring to?

Q I am referring to what you and Mr. Olsen and Mr. Thornton and Mr. Allen had been discussing in January and February of 1966.

A I think it is indicated in the minutes of the board meeting of February 28th, of which you have a copy, that Mr. Olsen did discuss the various resolutions and the tentative time schedule.

Q What did Mr. Olsen say about the debentures?

A It would be my recollection that he reviewed the time schedule, and that his only discussion of the debentures,

was in reference to the dates included in that tentative time schedule.

Q Did he discuss the conversion value of the debentures at that time?

A I cannot recall whether he did or didn't.

Q Did anybody say anything about the possibility that debenture-holders who did not have knowledge of the call would lose substantial money?

A No.

Q Did anybody say anything about the possibility that some debenture-holders might not receive notice of the call?

MR. GILLESPIE: Again, Mr. Winer, you run into this problem about notice of the call. It is our position that they did receive notice of the call, as required in the indenture. If you want to put the question was there a possibility or was there any discussion of a possibility that a debenture-holder might not have knowledge of it, that is another question.

MR. WINER: Without acceding to the rightness of your objection, I will take it your way.

Q Mr. Haynes, did anyone at the meeting mention the possibility that some debenture-holder might not have knowledge of the call for redemption before the conversion

date?

A No.

Q How long was the discussion on the subject of the debentures?

A The subject of the call of the debentures?

Q Let's say anything about the debentures.

(The question was read.)

Q How long was the discussion by Mr. Olsen on the subject of the debentures?

A As I indicated in an answer to a previous question, Mr. Olsen did review the tentative time schedule and, in that connection, would have mentioned, or the date with respect to the calls of the debentures would have been noticed in the time schedule by the directors.

Q Did it take more than a minute?

MR. GILLESPIE: Excuse me, you mean the discussion of the consideration?

As I understand the witness' testimony, the memorandum by Mr. Olsen, which has been furnished to you, makes reference to these things.

A That Mr. Olsen discussed his time schedule with the board. When, I think, you use the word "it," you have to be more explicit as to what you mean, otherwise it is going to create an erroneous impression.

MR. WINER: Let's proceed. Again, I don't know whether that is right.

Q How many minutes or seconds did Mr. Olsen take to mention, in speech, orally, the subject of the redemption of the convertible debentures?

A I don't think I recall specifically everything Mr. Olsen said, so I would not be in a position to answer that question.

Q Did anybody else mention the redemption of the debentures in any way, shape or form?

A I don't recall that anybody did.

Q How long did the whole meeting take?

MR. DOBBIN: I object to that question. It is on page 10 in answer to Interrogatory 6-C.

Q I would like to ask you what time in the morning the meeting began.

A I don't recall specifically, but I would assume it began some place between 9:00 and 10:00 in the morning.

Q As you look at the answer to Interrogatory 6-C, can you tell us whether the meeting was continuous from 9:00 to 10:00 in the morning through the various or two adjournments mentioned, or whether it was broken up?

A What do you mean by "broken up"?

Q Was there a time of adjournment between each

two meetings?

A I think the answer to the interrogatory, "The meeting was convened in the board room of Boeing's Seattle offices and it was adjourned for lunch."

I can't recall whether it was reconvened in the Seattle office in the 747 mock-up room, that is referred to some ten or twelve miles from Seattle, and the later adjournment that is mentioned in the answer to a Boeing conference room at Renton, would have been a relatively short one, since those two locations are fairly adjacent to each other.

Q At what time did the meeting end for the day?

A This can be checked; if you want a recollection -- it was fairly late in the evening.

Q At which place or places was the redemption of the debentures discussed?

A It is my recollection that that discussion was held in the Boeing conference room at Renton.

Q That means in the afternoon?

A Yes.

Q How much time was given to the discussion of the entire financing schedule presented by Mr. Olsen?

A I do not recall specifically the amount of time.

Q Did Mr. Olsen discuss any financing other than

the calling of the debentures?

A Mr. Olsen's discussion did involve resolutions, copies of which you have, which are contained in the February 28th board meeting with respect to an increase in the authorized stock and did include a discussion, as has been indicated earlier, of the tentative financing plan, the tentative financing schedule, part of which was the call of the debentures and a part of which was the steps necessary to issue equity securities.

Q In the production of documents, you gave us a list of holdings of debentures by officers and directors of the corporation, and the last such record is 1964. Does that mean that after 1964, no officer or director of the corporation owned any of the debentures?

MR. GILLESPIE: Let's see what the list says.

Do you have a copy of the list?

MR. WINER: I just have notes on it.

MR. GILLESPIE: I understand there has been produced to you the proxy statements of The Boeing Company issued under date of February 28, 1966, and there is in there certain information regarding the stockholdings of the officers and directors or, rather, of the directors who are officers. Perhaps this would

help you.

MR. WINER: This is the paper which, as I said to you, I think on the record, says that none of the nominees owns beneficially any of the company's four-and-a-half per cent convertible subordinated debentures due July 1, 1980.

What I would like to know is whether any of the directors who were present at the February 28th meeting and who may not have been nominees for re-election owned any of the debentures.

MR. GILLESPIE: We can find that out. I am sure it is a matter of record.

MR. WINER: Can you supply that, and we will leave a space for that?

A ---

MR. GILLESPIE: I think if you will consult the documents that have previously been produced to you by the defendant, you will find the proxy statement for the annual meeting of stockholders of The Boeing Company, 1965. It contains a similar statement to that which you previously read and lists the directors who were then nominees. I think from that you can construct the answer to your own question.

MR. WINER: According to my notes, 1965 and

1966 were missing under Item 33, and the one for 1966 was supplied under Item 49.

I am sure you will be willing to supply me with a copy of this notice of May 4, 1965.

MR. GILLESPIE: There, you see, you have 1963, 1964, 1965 and 1966 under Item 50.

MR. WINER: According to my notes, Item 50 was not served at the time. That may have been supplied later, but I never saw it. According to my notes, Items 47 and 48 were missing and Item 50 was missing, so it may have been sent later. In any event, if you will give us this, it will solve the question.

Q It is true, as indicated by the proxy statements, that some of the directors did own common stock of the corporation; is that correct?

A Yes.

Q Did some of the directors have options to buy stock?

MR. GILLESPIE: You mean stock options?

MR. WINER: If that is different, I will take it that way.

Q As of the date February 28, 1966?

A Yes.

Q Did you have any options to buy stock as of Feb-

ruary 28, 1966?

A I am sure I did.

Q Did you own stock as of that date?

A I am sure I did.

Q Did Mr. Olsen own stock?

A I have no knowledge of his holdings.

Q Did Mr. Thornton own stock?

A I have no knowledge of his holdings.

Q Did he have stock options?

A He may have. I am not sure, but that is a matter that can be checked.

Q Would you please check it and let us know?

MR. GILLESPIE: You want to know if Mr. Thornton had any stock options?

MR. WINER: Yes.

MR. GILLESPIE: We can check that.

MR. WINER: And whether he had any stock.

MR. GILLESPIE: I think that information, my associate, Mr. Dobbin, indicates to me that that information has already been supplied and apparently did not get into your notes.

Q When you met with Mr. Thornton, Mr. Olsen and the others mentioned in answer to Interrogatory No. 5, between March 2 and March 4, 1966, did anybody who participated in

those meetings discuss the timing of the notice to be given for conversion of the debentures?

A During the course of those meetings, the time schedules with respect to the initial steps of the financing program were discussed and the matter of the notice of the call of the debentures was a part of those time schedules.

Q Did anybody discuss the possibility that a holder of a coupon debenture might not receive knowledge of the call of the debentures?

A To the best of my knowledge, there was no discussion on that subject.

Q Was there any mention of the possibility?

A Is that different from the question you just asked?

Q I don't know. The question may have been the same because the answer was there was no discussion, and I would like to know if there was mention of it.

MR. GILLESPIE: You are beginning to split hairs thatway. I will have to object to the question as being repetitious.

MR. WINER: You don't want him to answer that?

MR. GILLESPIE: I think he has answered that

question.

MR. WINER: I think he avoided the question, so that is where we have a difference of opinion.

Q What reasons, if any, were given for the changes made in the tentative schedule?

MR. GILLESPIE: I think you are assuming there were changes and you further have not fixed any time for such discussions.

MR. WINER: I think you are a little fallible. I have been talking about discussions from March 2nd to March 4th listed in your answers to interrogatories. Didn't you understand that, Mr. Haynes?

THE WITNESS: No.

MR. WINER: Sorry.

Q Let me ask you this. Let's talk only about the discussions listed in the answer to Interrogatory No. 5 as having taken place from March 2nd to March 4th of 1966; would you please refresh your recollection, if necessary, by looking to see who was present, and I would now like to ask you whether anybody present at anyof those meetings discussed the possibility that a single holder of convertible debentures would not receive knowledge of the call?

A I think I have answered that question before, and the answer is there was no discussion.

Q Were the dates mentioned in Mr. Olsen's tentative schedule presented to the meeting of February 28th changed in any respect?

MR. GILLESPIE: You mean the board meeting of February 28th?

MR. WINER: That is the only one I know about, yes.

A I would have to review the documents to answer that question.

Q Have you any recollection of any changes being made?

A I just don't recall without looking at the documents.

Q Do you recall the selection which was made of dates?

A When you say the selection of dates, in what context?

Q In the context of redeeming the debentures.

A My recollection is that in those meetings the dates that were being considered, as far as a schedule was concerned, was basically the same dates that were in the schedule that Mr. Olsen used in his presentation to the board.

Q The resolution of the board allowed you to select

the date on which the publication could be made and the redemption date fixed, did it not?

MR. GILLESPIE: I think perhaps we had better refer to the resolution itself rather than trying to construct it. It is the best evidence of what the resolution provided.

MR. WINER: According to Interrogatory 6-B, the resolution reads as follows:

"President, vice-president of finance or treasurer of the company or any one of such officers is hereby authorized to take all such action as they or any one of them deems appropriate or necessary to call for redemption on a date to be selected by them or any one of them, all of the debentures."

Which one of the officers made a decision as to the date?

MR. GILLESPIE: If you know.

A I made the decision based upon consultation and the advice of our investment bankers and legal counsel.

Q By "counsel," do you refer to Mr. Olsen?

A I refer to Mr. Olsen as The Boeing Company's counsel, and the investment bankers' counsel was also involved in the establishment of the time schedule and recommendation thereon.

Q Did Mr. Olsen or the counsel for the investment bankers discuss in your presence the provisions of the debenture on the call for redemption?

A It is possible, to my recollection, that I was not specially a party to any discussion on the specifics.

Q Would the same apply to the indenture, the terms of the indenture with respect to redemption?

A The same answer would apply.

Q Specifically, did anybody bring out that the debenture said that notice should not be less than thirty nor more than ninety days?

MR. GILLESPIE: I think we are going to get into trouble here, Mr. Winer. I think we have to let these documents -- it seems to me you have to lay your foundation first, and then, having done so, if you want to ask questions with regard to it, okay.

MR. WINER: I will let it stand that way. If you direct him not to answer, we will have to take care of it.

MR. GILLESPIE: I renew my objection to the question. A proper foundation has not been laid and I advise the witness not to answer.

Q Did any of the investment bankers say anything at these meetings between March 2nd and March 4th about

the dates which you had selected for the call?

A I think they were in agreement with those dates.

Q Did they say anything?

A It was my understanding that Mr. Olsen, in preparing the schedule that was presented to the February 28th meeting, had had discussions with the investment bankers and, prior to the February 28th meeting, the investment bankers had already been considering time schedules, tentative time schedules.

Q Did they say anything between March 2nd and March 4th in your presence?

A I cannot remember their saying anything specifically.

Q Did Mr. Olsen say anything about the time schedule in your presence between March 2nd and March 4th?

A With respect to what?

Q With respect to the dates which you had picked for redemption.

A I am sure that as the time schedules were reviewed, those dates were mentioned by Mr. Olsen and, undoubtedly, by certain of the representatives there.

Q Would you tell us what everybody said with respect to the selection of the dates as they were being reviewed?

A It is my recollection that the dates that had

been in Mr. Olsen's tentative time schedule and presented to the board were the dates under consideration in the meetings of March 2nd and 4th and, other than just reading the time schedules, there was no discussion with respect to the dates, other than just acknowledging the dates in the tentative time schedule.

Q Was there any discussion about the form of the notice?

A During the course of those discussions, it was suggested that Mr. Thornton, the treasurer of the company, contact Chase Manhattan Bank, the trustee, and request that Chase have prepared a recommended form of notice.

Q Was that carried out, the recommendation to ask Chase to prepare a form of notice?

A That was carried out.

Q Was there any other discussion as to form of notice?

A The only other discussion was a review of the notice prepared by the trustee, Chase Manhattan Bank, which was provided to us.

Q That was later than the March 2nd and March 4th meetings, wasn't it?

A My recollection would be that the draft of that notice was made available to us by Chase in the latter

part of that time period.

Q That is between the 2nd and 4th?

A The latter part of that time period.

Q Was any discussion had as to where this notice should be published?

MR. DOBBIN: I object to the form of the question. I think the answer was given previously in answer to Interrogatory No. 11 on page 20.

Q According to the answer to Interrogatory No. 11 on page 20, Mr. Thornton wrote a letter on March 2, 1966, to the Chase Bank and gave them the redemption date and gave them the places and dates of publication. Is it your present recollection that that is correct?

MR. GILLESPIE: You are asking whether his present recollection to the answer to that interrogatory is correct?

MR. WINER: Right.

A It is my present recollection that the answer to the interrogatory is correct, but it is also my recollection that Mr. Thornton had discussed these matters with Mr. Howard of the Chase Manhattan Bank and had consulted with him with respect to certain information contained in this answer before writing that letter.

Q Is it your recollection that the dates and place,

that is, The Wall Street Journal publication had been determined on or before March 2, 1966?

MR. GILLESPIE: Do you understand the question, Mr. Haynes?

MR. DOBBIN: I object to that question as the answer was given by Interrogatory No. 12 on page 21.

MR. WINER: I don't want you fellows to think I acquiesce that these are good grounds of objection. I am just trying to get through the deposition.

MR. DOBBIN: I think repetition is always good grounds for objection.

MR. WINER: Deposition and interrogatories, in my opinion, do not cover the same purpose. Otherwise they would not exist independently.

MR. GILLESPIE: If you want to ask him if the answer to Interrogatory No. 12 correctly expresses his present recollection of when the decision was made, I have no objection.

MR. WINER: I want to call your attention, Mr. Gillespie, to the fact that these two items do not cover the same ground. The answer to Interrogatory No. 11 covers Wall Street Journal as the place. March 8th and 18th as the dates. Whereas Interrogatory No.

12 refers only to fixing March 8th as the date for the first publication.

MR. GILLESPIE: That is one of the troubles of your question. It is actually two questions in one. Maybe you should break it up.

Q Mr. Haynes, when was it decided that the redemption notice should be published in The Wall Street Journal on March 8 and March 18, 1966?

MR. GILLESPIE: Again you are running into the same problem, Mr. Winer.

MR. WINER: This is your problem because I am quoting from your answer.

MR. GILLESPIE: The problem is your question, as presently put, gives grounds for an answer with regard to when it was decided to publish in The Wall Street Journal and also presents the question of when it should be published in The Wall Street Journal.

MR. WINER: I will repeat it with quotations and we can drop it, as far as I am concerned.

You put the questions because I don't get the fine distinction.

MR. GILLESPIE: When was it decided to publish the notice in The Wall Street Journal?

THE WITNESS: The final decision for the publication would have been made probably on March 7th.

MR. GILLESPIE: When was the selection of The Wall Street Journal as the medium for the publication of notice?

THE WITNESS: Made on March 2nd.

MR. GILLESPIE: When was the decision made as to the dates of publication; was March 7th the final decision?

THE WITNESS: As indicated in Interrogatory No. 12, on March 2nd the dates were set, but they were subject to modification.

Q As answered in Interrogatory 12; is that correct?

A Yes.

Q Was there any modification?

A There was no modification.

Q Was there any discussion of modification?

A I don't recall if there was or was not.

Q According to the answer to Interrogatory No. 5, the discussions were held March 2 - 4, 1966; does that mean they were also held on the 3rd?

A The meetings of March 2nd through 4th, as is indicated by the answer to Interrogatory 5, not only includes

discussion of schedule, but includes other facets of the possible financing being planned.

Q Were discussions held on the 3rd?

A Discussions with respect to the possible financing were held on the 3rd.

Q Were discussions with respect to the debentures held on the 3rd?

A I do not recall if there was any specific discussion as to the call of the debentures on the 3rd.

Q Was there any discussion either the 3rd or 4th with respect to the call of the debentures?

A Again, going back to the answer to Interrogatory 11, it is indicated that a telegram was received on March 3rd from Mr. Howard of the Chase Manhattan Bank, which included a draft of a contemplated notice which had been prepared by counsel for Chase in accordance with the usual practice of Chase.

Q Does that mean that you discussed the telegram?

A It would be my recollection that the draft of that contemplated notice was reviewed by our investment bankers, their counsel, and by our counsel.

Q Mr. Haynes, you verified these answers to interrogatories on February 18, 1968. Had you before you diaries or other records or memoranda from which you compiled the

information given in the answers to these interrogatories?

A I had available to me all of the background information that was utilized in the preparation of the answers.

Q Would you please answer one question? I asked you whether you had before you diaries or other memoranda of yours, maybe I did not say "of yours," I will now say it, from which you compiled the answers to these interrogatories.

A Well, I don't maintain -- the answer is no.

Q What had you before you to fix the date March 2nd as the date on which the publication notices were decided upon, so far as date and place of publication were concerned?

MR. GILLESPIE: I think, Mr. Winer, you are misstating what has been testified to here as to the dates when these items were decided upon. We are going to get into trouble. If you want to ask him the simple question, what did you have before you when you compiled or reviewed and executed the verification to these answers to interrogatories, I have no objection to that question.

MR. WINER: Let's take that first.

Would you answer Mr. Gillespie's question,

what did you have before you?

THE WITNESS: I can't recall specifically what I had in front of me. The answers to these interrogatories were obviously prepared over a period of time. I was involved in the preparation of them and relied on counsel and our investment bankers with respect to the development of the answers.

Q Did you have a diary?

MR. GILLESPIE: I am afraid you have had the answer to that question.

Q I just want to know simply did you have a diary?

MR. GILLESPIE: I object, that question is repetitious and I advise the witness not to answer.

Maybe this is a good place to break for lunch.

MR. WINER: We will reserve that for after lunch.

(Whereupon, at 1:00 p.m., a luncheon recess was taken.)

oOo

AFTERNOON SESSION

2:15 p.m.

H A R O L D W. H A Y N E S, witness, resumed the stand and testified further as follows:

EXAMINATION (Cont.) BY MR. WINER:

Q Mr. Haynes, after March 8, 1966, were there any discussions between you and anybody else in the company or representing the company with espect to giving additional notice -- by "additional notice," I mean in addition to the two Wall Street Journal publications?

Let me ask you, before you refer again to the interrogatories, have you any recollection independent of the answers to the interrogatories?

MR. GILLESPIE: Do you withdraw the present question, I take it?

MR. WINER: No, it is the same question.

MR. GILLESPIE: It is not the same question. It is just left open on the record without an answer.

MR. WINER: I will restate it.

Q Have you any recollection of any conversations after March 8th with respect to notice or giving of notice other than the two publications in The Wall Street Journal which we have talked about?

A Yes.

Q What is your recollection of the next time that was discussed?

A My recollection is consistent with the answer to Interrogatory 24.

Q Was there any discussion between March 8th and March 25th of the matter of additional notice?

A To the best of my recollection, there was not.

Q On March 25th, was a decision made to publish again in The Wall Street Journal and in The New York Times?

A Again, the answer to that is the answer to Interrogatory 24.

Q Is the answer that you did make the decision?

A I will read to you from the answer.

Mr. Olsen discussed these matters and then Chase arranged for the third publication in The Wall Street Journal and for a single publication in The New York Times.

Q Were you present when the decision was made to publish again in The New York Times?

MR. GILLESPIE: Publish again in The New York Times?

MR. WINER: Strike out the word "again."

A I was not present.

Q Was anything said at the time when you were present in New York as to making a publication in The New

York Times?

A To the best of my recollection, that discussion occurred subsequent to the meeting referred to in the answer to the Interrogatory No. 24.

Q Were you present at any time when a discussion about The New York Times was had?

A The prospective discussion.

Q Discussion of publication in The New York Times was had?

A To my recollection, I was not present.

Q According to your answer to Interrogatory No. 24, the Chase arranged for the publication.

Was your permission asked or your opinion asked before the Chase arranged for that publication?

A My recollection would be that I was involved, either directly or through Mr. Thornton, in discussions with Mr. Olsen and authorized Mr. Olsen on the basis of his discussions had with Chase and our investment bankers to take whatever action they deemed advisable.

Q What was the date on which you discussed this matter with Mr. Olsen or Mr. Thornton or both?

A It would be March 25, 1966.

Q Was there any discussion at that time as to the legal requirements of the indenture?

A To the best of my knowledge, none or, at least, not in my presence.

Q When you say in Interrogatory No. 24, "It was generally understood at the time that this publication exceded the requirements of the indenture," who was it that understood this?

A I was relying on the investment bankers and our Boeing legal counsel.

Q Did one of them say, in your presence or hearing, that it was not a legal requirement that there be any other publication than had already taken place?

A I don't recall.

Q Did anybody raise a question as to whether the publication already made satisfied the legal requirements of the indenture?

A I was not involved in any discussion on that particular point.

Q Does that mean that you were not present at the time of any such discussion?

MR. GILLESPIE: It seems to me as though it did.

MR. WINER: It seems to me that a man of his ability could answer a question more directly.

A The direct answer to the question is that I was

not present because Mr. Olsen was in Seattle, to the best of my recollection, and these conversations were undertaken by telephone.

Q Were you aware when the publication was going to appear in The New York Times?

A I am sure that Mr. Thornton --

Q Can't you answer that you were or were not?

A It is my recollection that Mr. Thornton advised me from the basis of his discussions with Mr. Olsen.

Q Is that an answer?

A I think it is.

Q What did he advise you?

A Of the conclusion that Mr. Olsen, investment bankers had reached in the Chase.

Q What was that?

A Stated in the answer to Interrogatory 24.

Q I am going to ask that you answer it. You have been reading all day from the interrogatories, and I think you can answer it.

MR. GILLESPIE: If you have any other answer. If you don't, you are entitled to rely on the answer to the interrogatory.

A I have no other answer than the answer to the interrogatory.

Q What did you rely on when you swore that the answers in the interrogatories were true and correct, to the best of your knowledge, information and belief?

MR. GILLESPIE: I object to the question as having previously been made and previously answered.

Q What did you rely upon with respect to the answer to Interrogatory 24 when you swore to the answers to the interrogatories?

MR. GILLESPIE: He has previously stated that he learned this information in his conversation with Mr. Thornton.

MR. WINER: You are entitled to make the statement, but I don't have to abide by it.

MR. GILLESPIE: You are going over the same thing.

MR. WINER: Somebody else will have to rule on it.

MR.GILLESPIE: We are just not getting forward at all.

MR. WINER: I think that is true, but it may be for a different reason.

Q Mr. Haynes, were you aware that the publication was going to be made on March 28th in The New York Times?

A To the best of my recollection, I was.

Q And you are aware that the conversion date was March 29th?

MR. GILLESPIE: You mean the final date for conversion?

MR. WINER: As interpreted by you, yes.

A Yes.

Q Was there any discussion of whether there should be any extension of time so that there be an opportunity for the March 28th publication to come to the attention of more bondholders or debenture-holders?

Have you any independent recollection?

He has all day been referring to the interrogatories. I would like to have his recollection.

MR. GILLESPIE: Have you got a question on the record?

MR. WINER: Yes.

MR. GILLESPIE: Not one that the witness can understand.

MR. WINER: That depends upon the ability of the witness to understand English.

MR. GILLESPIE: Would you read back the question?

(The question was read.)

A My recollection is that there was some discussion.

Q You were present at this discussion?

A My recollection is that I addressed that question to Mr. Olsen.

Q Did you discuss the matter with him? Did he give you an answer?

A He gave me an answer that there was no legal way that the redemption period could be extended.

Q This was on or about March 25, 1966?

A I can't recall specifically when the conversations took place. It either would have been probably on the 28th or 29th.

Q Do you recall whether it was before or after the notice appeared in The New York Times?

A What time would you say the notice appeared in The New York Times?

Q March 28, 1966.

A It would be my recollection that it is possible that discussions along that line took place on March 28th or March 29th. I do not know which date.

Q Is it your best recollection that they took place on March 28th or 29th?

A It is my recollection that they took place either on March 28th or 29th or both days.

Q Was there a publication put out by The Boeing

Company called The Boeing News?

MR. GILLESPIE: A publication of what?

MR. WINER: I think he knows. Any publication.

MR. GILLESPIE: I object to the form of the question, and direct the witness not to answer.

Q Do you know of any publication called The Boeing News?

A Yes.

Q What is that publication?

A It is a weekly company newspaper.

Q Distributed to whom?

A Distributed to all employees or it is available for distribution to all employees.

Q Had you anything to do with putting notices into that publication?

A Notices covering what subject?

Q Any subject.

A As an employee and an officer of the company, I was in a position to have notices appear in that particular publication.

Q Did you cause a notice to be put into that publication with respect to the redemption of the debentures?

A I am sure I was involved in the decision to include

in The Boeing News an article with respect to the redemption of the debentures.

Q Is there a publication circulated by Boeing to stockholders?

A Is there a publication circulated by Boeing to stockholders? Is that your question?

Q That is the question.

A Yes, there is.

Q What is the name of that?

A Well, we will start off with the annual report to stockholders.

Q Is there, apart from the annual report, is there usually a four-page leaflet circulated to stockholders at regular intervals?

A We do release a quarterly stockholders' letter.

Q What is that called?

A A quarterly stockholders' letter.

Q Did you ever cause any item to be inserted in that quarterly stockholders' letter?

A Yes.

Q Did you cause any to be inserted in it with respect to the redemption of the debentures?

A There may have been included in a stockholders' letter the result of the call of the debentures.

Q That was after the conversion date?

A The normal publication date of such newsletters were in connection with the quarters of the year, and the particular publication that would be involved in this period of time was not distributed to stockholders in the latter part of April 1966.

Q When was the one before that distributed?

A That would be for the third quarter of 1965 which would have been distributed in November of 1965 or the latter part.

Q Would there not have been one in February of 1966?

A There would not have been a stockholders' letter in February of 1966.

Q I understood you to say it was quarterly. Was I wrong?

A I misstated that. It is for the first three quarters of the year. The fourth quarter is covered by the annual report to stockholders.

Q And the quarter between November and April would have been February, is that right, if we took three months in between?

A What are you saying?

Q I am saying that three months after November and

three months before May would be February, wouldn't it?

A I can't disagree with that.

Q Mr. Haynes, did it occur to you or did you discuss with anybody the possibility of a stockholders' letter in February or in March?

A No, I did not.

Q Were you aware that this whole debenture issue was sold or offered to stockholders on a rights basis in 1958?

A Yes.

Q Were you aware of how many of the debentures were taken up on the exercise of rights?

MR. GILLESPIE: In 1958?

MR. WINER: In 1958.

A I was aware that a substantial portion of the debentures were taken up through the rights offering.

Q Did it occur to you or did you discuss with anybody the possibility that debenture-holders could be reached by a letter to stockholders?

MR. GILLESPIE: I object to the form of the question.

MR. WINER: What is your objection?

MR. GILLESPIE: There is no proper foundation. If you ask him first whether they could be

reached in that manner and then, if you want to ask him after you get that whether there was a discussion of it, I would withdraw my objection.

MR. WINER: I think we will have to let your objection stand because I don't go along with that.

Q Had you ever participated in the filing of a Form 8-K by the Securities and Exchange Commission?

A I may have, from time to time, supplied information for inclusion in an 8-K report, but it was not my office's responsibility for filing 8-K's.

Q Who did that?

A I think the filing of 8-K's was the responsibility of the vice-president of administration and the secretary with the assistance of company counsel.

Q Did anybody consult you with respect to filing an 8-K for the month of February 1966?

A No.

Q Did anybody consult you with respect to filing an 8-K for the month of March 1966?

A No.

Q Did anybody ever consult you with respect to filing that Form 8-K information about the redemption of the debentures?

A No.

Q Mr. Haynes, after the debentures were issued in 1958, were there regular periods for computing the conversion basis of the debentures so far as your office was concerned?

A When you say my office, that responsibility was not in my office. The early periods in 1958-59, if you recall, I indicated I was assistant controller, and that responsibility was in the treasurer's office, who then reported to the vice-president of finance.

Q When did it become your responsibility, if it did?

A In 1960.

Q When it became your responsibility, did you recompute the sums which were handed to you on memoranda to see whether the basis, as given, was correct?

A I wouldn't say recompute. I don't know that I personally recomputed. Although it was not my responsibility, I was generally aware of those transactions that had occurred that would in any way be involved in any computation.

Q What was your responsibility, if any, between the issuance of the debentures in 1958 and the time when you became vice-president of finance?

MR.GILLESPIE: You mean with respect to the

computations of the conversion basis?

MR. WINER: Yes.

A In 1959, to the end of 1959, I probably had no direct responsibility. Starting in 1960, I assumed responsibility.

Q Did you see the computations made in 1958 and 1959 at that time?

A I may not have at that time, but I had been aware and followed the computations in 1959 so I was generally aware of the status of the conversion computation.

Q I ask you to look at that paragraph of Item 19 produced on the discovery which is a typed letter or memorandum entitled, "Bond indenture restrictions," dated March 10, 1965.

MR. GILLESPIE: Do you want to mark this?

MR.WINER: Mark the whole memo, dated March 10th, as Plaintiffs' Exhibit 3.

(Memorandum entitled, "Bond indenture restrictions," dated March 10, 1965, marked Plaintiffs' Exhibit 3 for identification, as of this date.)

Q At the top of page 3, the item reads:

"The conversion rate calculation to date is as follows:"

Am I correct in stating that as of that date the

only three bases for change in the basic conversion rates was the four per cent stock dividend of November 4, 1958, the two per cent stock dividend of November 2, 1959 and the Vertol acquisition?

A Those were the only transactions involved in making the calculation.

Q Following March 10, 1961, and up to the date of redemption, was there any additional basis for recalculating the conversion rates?

A No.

Q On page 3 of Exhibit 3, it appears that the conversion rate as of that time was 2.0048. Is that correct?

A That is correct.

Q How much more would the rate have had to be to result in the issuance of additional shares on conversion?

MR. GILLESPIE: I object to this question on the ground that it calls for a legal conclusion in that it calls for a legal interpretation of the indenture or in terms of the indenture.

Q Did you refer this question to a lawyer?

MR.GILLESPIE: Which question?

MR. WINER: The question of a conversion rate.

MR. GILLESPIE: Yes. When?

MR. WINER: Ever.

A It would be my recollection that legal counsel had, from time to time, reviewed the conversion rate calculation made by the company.

Q When you say "legal counsel," do you mean Mr. Olsen?

A Mr. Olsen's firm. I don't know whether he, personally, reviewed the matter.

Q How often did you refer that to Mr. Olsen's firm?

A I don't recall how often.

Q Did you ever refer it to Mr. Olsen's firm after March 10, 1961?

A After March 10, 1961, I don't recall. I would doubt it. There was no necessity.

Q Did you refer it to Mr. Olsen or his firm prior to March 10, 1961?

A Yes.

Q When?

A In connection with the Vertol acquisition.

Q Did you personally discuss the matter with Mr. Olsen or some member of his firm at the time of the Vertol acquisition?

A Discussions were held with Mr. Olsen in connection with the Vertol acquisition.

Q Did you personally participate in those discussions?

A I can't recall specifically but I am sure I did.

Q The Vertol acquisition may cover a long period of time. I should like to know at which stage of the Vertol acquisition these discussions took place.

MR. GILLESPIE: Mr. Winer, you say it may have covered a long period of time. Why don't you ask him first whether it covered a long period of time?

Q When you refer to the Vertol acquisition, what period of time are you referring to?

A When I refer to the Vertol acquisition in terms of involvement in any way in the area of the conversion rate calculation, it would be in the 1960 time period.

Q Had you anything to do with the Vertol deal or acquisition prior to January 1, 1960?

A I was involved in certain of the financial reviews in connection with the acquisition.

Q When did the consideration of the Vertol acquisition first come to your personal attention?

A The fall of 1959.

Q Can you give us a closer date than the fall of 1959?

A No.

Q What was your connection with the Vertol acquisition in the fall of 1959?

A As I indicated to an earlier question, I was requested to involve myself with certain financial reviews.

Q What were those reviews?

A It would be my recollection that the reviews involved the financial statements of Vertol.

Q Did you make any report to your company or any members of your company as to your findings in your reviews of the Vertol financial statements?

A The answer would be that I did not make a specific report. Whatever information I developed was provided to Mr. Prince, who was the individual member of management responsible with making the overall review of the Vertol situation.

Q I show you page 8 from the minutes of Boeing, an extract --

MR. GILLESPIE: Boeing directors?

MR. WINER: I don't know. I don't know how they keep their minute books.

Q I ask you when the meeting was held at which you reported, as set forth in this exhibit.

A As indicated on the certificate to which the memorandum to which you refer is attached, the meeting was

held on April 4, 1960.

MR. GILLESPIE: It is a meeting of the board of directors?

THE WITNESS: Yes.

MR. WINER: I ask that this be marked as Plaintiffs' Exhibit 4.

A certificate of the assistant secretary, H. V. Kohr, as to an extract from the minutes of the meeting of the board of directors of Boeing held on April 4, 1960.

(A certificate of the assistant secretary, H. V.Kohr, as to an extract from the minutes of the meeting of the board of directors of Boeing held on April 4, 1960, marked Plaintiffs' Exhibit 4 for identification, as of this date.)

Q Before you made the statement at the directors' meeting, as recited in Exhibit 4, how long had you studied the matter on which you reported?

A I don't recall the precise length of time. It was over a period of time and in connection with discussions with both our legal counsel, our accounting counsel and our investment bankers.

Q What independent study did you make on the subject on which you reported?

MR. GILLESPIE: What do you mean?

MR. WINER: I mean independent of counsel and bankers.

A Do you mean by that did I go to the text books, or what?

Q I really don't know what you did. That is why I am asking you the question.

A I think from my educational background I had some general knowledge in this area, and I supplemented that knowledge with consultation with legal counsel and our investment bankers.

Q I call your attention to the first paragraph after the introductory paragraph in Exhibit 4. The statement is as follows:

"Mr. Haynes stated that in order to protect the holders of the convertible subordinated debentures against dilution of the value of the convertible features of the debentures, upon the issuance of additional shares of capital stock of the company after the date of the indenture, the indenture provides that if any shares of stock are issued for a consideration less than $50 a share, an adjustment in the conversion rate may be required."

Did you state this of your own knowledge?

A Yes.

Q I call your attention to Exhibit 3, page 3, where your conclusion is that the conversion rate, after the Vertol acquisition, is 2.0048. Had the conversion rate been 2.051, would the holders of the debentures be entitled to additional shares?

A I think the indenture is clear on that point.

Q How about you? Are you clear about it?

MR. GILLESPIE: Objection. Do not answer that question. It is argumentative.

MR. WINER: I would like to have the answer.

MR. GILLESPIE: I advise the witness not to answer.

Q I will put it simply so there will be no question of mistake.

If the conversion rate shown by you after the Vertol acquisition had been 2.051, would the holders of the debentures be entitled to more shares on conversion?

MR. GILLESPIE: I object to the question on the ground that it calls for a legal conclusion and interpretation of the indenture, and I advise the witness not to answer.

Q Now I call your attention to the statement after that figure.

"Per the indenture, it is not necessary

to adjust the conversion rate unless it would increase the rate by at least one-twelfth of a share."

Were you aware of that statement at the time it was made?

A The memorandum was addressed to me.

Q Did you disapprove the memorandum?

A There was no approval or disapproval required.

Q Whose business was it to see to it that if a person tendered a debenture for conversion, they bought the right number of shares?

A At that time it was my responsibility, but this whole matter had been taken care of in 1960 at the time the Vertol acquisition was consummated and the par value established by the board of directors.

Q On your recommendation?

A On my recommendation.

Q Now let's go back to the first item, four per cent stock dividend, November 4, 1958.

Did you compute four per cent of 7,037,447 shares?

MR. GILLESPIE: You mean did he personally?

Q Did he compute it himself, whether somebody else did it ahead of him or after him, did he make the computation at any time personally?

A The computation was made in November of 1958, at

which time I was assistant controller of the company and was not directly involved in making such computation.

Q Did you ever take four per cent of 7,037,447?

A No. Do you want me to do it now?

Q Please do. What figure do you come up with?

A 281,497, or rounded off to 498 shares.

Q Can you explain why the figure given there is 281,537?

A Well, we have a complete detailed record of the stock issued between the time the 7,037,447 was established, I am sure I can. It is quite obvious that there were additional shares issued.

Q Were these additional shares excluded in the computation or included in the computation?

A On the basis of the information I have, they would have to be excluded shares.

Q So that the figure there is not correct, is it? The figure which says, "The conversion rate calculation to date is as follows," is incorrect, is it not?

A On what basis do you say it is incorrect?

Q On the basis of the computation figure that you gave, is that correct? I am also saying that the number of outstanding shares at November 4, 1958 --

A Do you have Item 22 with you?

MR. WINER: What is it?

THE WITNESS: Capital stock history of the company from July 1, 1958 to May 1, 1966.

MR. WINER: Mark The Boeing Company capital stock history, dated 7/1/58 to 5/1/66, as Plaintiffs' Exhibit 5 for identification.

(The Boeing Company capital stock history, dated 7/1/58 to 5/1/66, marked Plaintiffs' Exhibit 5 for identification, as of this date.)

Q Proceeding with Exhibit 3 on page 3, you see a two per cent stock dividend of November 2, 1959?

A Correct.

Q Would you tell us what two per cent of 7,037,447 is?

A 140,749.

Q Mr. Haynes, I would like to accept your figure, but I think it is adverse to yourself.

A Would you repeat the question then?

Q Would you take two per cent of 7,037,447?

A Two per cent of 7,037,447?

Q Yes.

A It appears right to me.

Q Would you, Mr. Haynes, please take after your figure of four per cent on 7,037,447, is added to that

figure, then take two per cent of that?

MR. GILLESPIE: You mean take two per cent of 7,318,984?

MR. WINER: My figure is 7,000,000.

Q The original figure is 7,037,447. Taking four per cent of that we came up with 281,498. The sum total of those figures is 7,318,945. Would you please take two per cent of that figure?

A 146,379.

Q So that the total of those figures, then, is now 7,465,325, is that correct, or 324?

A I think your addition is right.

Q Would you tell us how, on Plaintiffs' Exhibit 3, the figure 147,489 is listed as the stock dividend for the purposes of calculating the conversion rate?

A What do you mean, how is it listed?

Q The person who compiled this conversion rate calculation, how did they come to that conclusion?

A He took two per cent of the then outstanding shares, which appears on the second page of the schedule in Exhibit 5.

Q Does that total which appears on page 2 of Exhibit 5 include some excluded shares?

MR. GILLESPIE: What do you mean by "ex-

cluded shares"?

MR. WINER: I mean as defined in the indenture about which we are talking.

MR. GILLESPIE: Suppose you refer to what you are referring to in the indenture.

MR. WINER: I will be glad to do that for you.

If you will turn to page 34 of the indenture, you will find the definition of excluded shares.

MR. GILLESPIE: Now, what is your question?

(The question was read.)

MR. GILLESPIE: What is the total that you are referring to, Mr. Haynes?

THE WITNESS: I would like to know what total he is referring to as the excluded shares that are included in the computation that he is raising a question with respect to.

MR. WINER: I am referring to whatever figure was used for the purpose of computing the two per cent stock dividend.

THE WITNESS: Is what you are saying then, is that the 147,489 are excluded shares that should not be included in the computation?

MR. WINER: I am saying that the figure of

147,489 includes shares which are excluded within Paragraph or Section 4.05 of the indenture.

THE WITNESS: How many shares are there in your definition?

MR. WINER: I am going to ask you to tell me. You did this. I didn't do it. You tell me.

THE WITNESS: You have a different definition of excluded shares.

BY MR. WINER:

Q I didn't ask you about any definition except whether it includes excluded shares. We will start it differently.

Tell us what shares are included in the figure on which the two per cent stock dividend was computed.

A As is shown on page 2 of Plaintiffs' Exhibit 5, the two per cent stock dividend was based upon 7,374,422 shares.

Q That total, according to page 1 of Exhibit 5, includes 54,386 shares issued under the incentive compensation plan, does it not?

A Yes.

Q It includes 1,052 shares issued upon conversion of the debentures, does it not?

A Correct.

Q Did you ask Mr. Olsen whether, for the purpose of calculating the conversion rate, those shares issued under the incentive compensation plan and, in conversion of the debentures, were a proper basis of calculation?

A I did not.

Q To your knowledge, did anybody else ask counsel for an opinion?

A I do not know the answer to that question.

Q When this was brought to your attention in 1961 on or about March 10th, did you read it?

A Did I read what?

Q Plaintiffs' 3.

A I am sure I did.

Q Did it occur to you that the shares issued under the incentive compensation plan and in conversion of debentures had been included in the computation of the stock dividend for the purposes of computing the conversion rate of the debentures?

MR. GILLESPIE: I object to the form of that question.

MR. WINER: I will stick by it.

MR. GILLESPIE: I am objecting to the use of the words, "Did it occur." If you ask him if he was aware of it, I will withdraw it.

MR. WINER: And you say I split hairs.

Q Were you aware of this in 1961 when you received Plaintiffs' Exhibit 3 for identification?

A I would say I would have had to have been aware of it.

Q When you saw that the last figure on conversion rate was 2.0048, were you aware that if that had been three-ten thousandths higher, you would have owed more stock to the holders of the debentures?

MR. GILLESPIE: What, specifically, are you referring to?

MR. WINER: The same page 3 of Exhibit 3.

MR. GILLESPIE: Are you referring to the figure in the last column on page 3 down in the middle of the page when you say 2.0448?

MR. WINER: That is exactly it.

Q Were you aware that if that had been three-ten thousandths higher, you would have owed additional stock on the conversion of the debentures?

MR. GILLESPIE: I object to the question on the ground it calls for a conclusion.

MR. WINER: As to what he was aware of?

MR. GILLESPIE: It calls for a conclusion. This is your argument. Ours probably will be the

opposite.

MR. WINER: I don't think there is much argument if it is a conclusion if he was aware of it.

Q Did you give any consideration to the possibility that there was a higher conversion rate owing to the debenture-holders?

A You mean at the time I read this memo?

Q Let's take that time first.

A No.

Q Have you ever, prior to this afternoon, given consideration to that question?

A No.

Q Did you read the complaint in this action?

A I have not reread it recently.

Q But did you at one time read it?

A Yes.

Q Did you find in there a cause of action or a count to the effect that there was due to the holders of the debentures a greater number of shares on conversion than was given by the company?

A I read that in the complaint.

Q Did you then pursue the matter back to the computations in Exhibit 3 or elsewhere to determine whether there was any validity to that position?

MR. GILLESPIE: I object to the form of that question.

Q Did you then look or recompute the conversion basis?

MR. GILLESPIE: That is after reading the complaint?

MR. WINER: After reading the complaint.

A The answer to that would be no.

Q Did you discuss that possibility with counsel after reading the complaint?

A To the best of my recollection, the only possible discussion was that the only way that figure would have been arrived at was from the information taken out of the annual reports without reference to the specific data upon which the company's computations were made.

Q And beyond that, there was no further discussion?

A That is correct.

Q Who is the author of the Plaintiffs' Exhibit 3?

A It indicates it is L. E. Fillon.

Q What position did he hold on March 10, 1961?

A I don't recall specifically, but he was working in the treasurer's office.

Q Did he compile the calculations in Exhibit 3?

A I would assume so, on the basis he signed the

memorandum.

Q The plan and agreement of reorganization between Boeing Airplane Company and Vertol Aircraft Corporation is dated January 18, 1960. Is that the date, to the best of your knowledge, on which it was executed?

A To the best of my knowledge, yes.

Q Did you become vice-president of finance prior to January 18 or after January 18, 1960?

A My recollection, it would be after January 18th.

Q According to a statement attributed to you at the bottom of the fourth page of Exhibit 4, the closing price on March 30th, the day before the closing date, was 24 1/8; that refers to the closing price of Boeing stock on the exchange. Is that correct?

A That is correct.

Q Were you at that time vice-president of finance?

A My recollection is I was not.

Q In what capacity was it that you were selected to make this report?

A I was then controller of the company.

Q According to the books and records of Boeing, what was the value added to Boeing's net worth by the acquisition of Vertol?

MR. GILLESPIE: I am going to object to

that question. I don't see where this comes under the questions or items that are subjects of inquiry pursuant to our stipulation.

MR. WINER: If you would please read page 35 of the indenture, you will find it is rather material to the calculation of the conversion.

MR. GILLESPIE: The board of directors have determined this, I assume, that being the case, then I would think the question is now whether the computations were properly made from that. If you want to ask about computation, I won't object. If you are going into background of Vertol, I am objecting right now,and we may as well go to court.

MR. WINER: It seems to me, despite the breadth of that statement, there are still other possibilities. I did not intend to get an appraisal of Vertol but I did intend to get the basis for Mr. Haynes' attribution of the value of Vertol.

MR. GILLESPIE: That is starting down the road. You know that famous expression. The road to hell is fast and slippery. You start down there and we will be in trouble. I am objecting now.

MR. WINER: We will have to go to court on that because we have to find the full basis of this

report made by Mr. Haynes, which is what you furnished as an extract from the minutes of the board of directors.

MR. GILLESPIE: Once the board, in their business judgment, has rendered that, then you are through. You can question the computations on that, but if you are going into a valuation of Vertol, we must call a halt.

MR. WINER: At the risk of going to hell with you?

MR. GILLESPIE: I am not going. I am just not going with you.

MR. WINER: I took it as an invitation. I would like to say that Mr. Haynes arrived at a figure and, apparently, from the minutes you gave us, his four-page statement, as far as the minutes are concerned, was the only reference to the valuation of the Vertol Company, and I want to examine him as to how he selected one figure rather than another figure.

MR. GILLESPIE: That is a long way from a lawsuit, that is complaining about adequacy of notice to debenture-holders.

MR. WINER: You should read the complaint.

MR. GILLESPIE: I have, and within the last twenty-four hours.

I am objecting, and advise the witness not to answer those questions.

MR. WINER: I suggest that we try to get to the court today or the first thing in the morning while the witness is here.

MR. GILLESPIE: I suggest you finish your examination, except for that.

MR. WINER: I am not going to inquire any further about the question of conversion rate until we get a ruling.

MR. GILLESPIE: You have no further questions for Mr. Haynes?

MR. WINER: I did not say that. I said I am not inquiring until I get a ruling. I suggest that we suspend and, at your convenience, we will go to the judge on this question tomorrow morning first or, if it is agreeable with Mr. Wechsler and Mr. Olsen, we will proceed with his testimony tomorrow morning. I don't care which you do first, but I do insist that before Mr. Haynes leaves, to the extent that I have any rights to insist, that we get a ruling here first.

MR. GILLESPIE: I would suggest that you finish your other topics and get them out of the way.

MR. WINER: Off the record.

(Discussion off the record.)

BY MR. WINER:

Q I will ask these questions just reserving my rights, as I said, with respect to the report given by Mr. Haynes and the action of the board of directors on that report.

Mr. Haynes, how was the option price for the stock option given to Vertol employees determined?

MR. GILLESPIE: If you know.

A Those options were issued to Vertol employees before our involvement, so I have no knowledge of how they were arrived at.

Q When Boeing gave its options to Vertol employees, what was the basis for determining the option price?

MR. GILLESPIE: I object to the form of that question.

Q Did Boeing at some time replace the options which Vertol had given to its employees with stock options for Boeing stock?

A Yes.

Q At what price were Vertol employees given the right to buy Boeing stock?

Were they given eighty-five per cent of market, or was it market at the time of purchase, or what? What

was the price?

MR. GILLESPIE: Off the record.

(Discussion off the record.)

MR. GILLESPIE: Mr. Haynes, I take it that you do not know presently the answer to that question?

THE WITNESS: I do not know the answer to that question.

MR. GILLESPIE: You have asked us to look into that information, and I will reserve as to whether we will be able to check into it, but I will let you know whether we can supply the information.

MR. WINER: And, if you are able, you will supply it into the answer?

MR. GILLESPIE: I want to look into the question first, and I will advise you what action we will take with regard to it.

In any event, you do not presently have it here?

THE WITNESS: No.

Q As I understand it, Mr. Haynes, you are stating that you do not recall the formula for the purchase; is that correct?

A If you are asking me whether I know the basis upon which the Vertol board of directors ran its stock options,

the Vertol employees, prior to the time that Boeing acquired Vertol, the answer is I don't know.

Q Do you know what obligations Boeing assumed with respect to the Vertol employee options to acquire Boeing stock?

A I assume that is in the January document. There is reference to the option in there, so I assume that what undertaking Boeing agreed to is spelled out in the plan of reorganization.

MR. GILLESPIE: Which has been supplied as Item 23 to the plaintiffs.

Q Having read that, I cannot concur in the assumption. Item 23 states that the Vertol options will be at the ratio of two shares of Boeing for each three shares of Vertol, that the optionee had the right to acquire.

I am not asking you for that information. What I am asking you is what he would have to pay for the two shares of Boeing which he would acquire.

A Again, I think you referred to a schedule that had those prices included on it that has been produced. That schedule --

Q Let me make a statement. The schedule, as I understand it, because I read it, provides for a slightly different price for the various shares acquired by Vertol

employees. They are $24 and change, or $25 and change, or $26 and change. I want to know whether there was some date fixed for pricing, whether there was a percentage of the market price on that date or of any other date fixed for pricing those shares. If you would give it to us by tomorrow, that will be quite satisfactory to me. If you cannot, then let us know that.

MR. GILLESPIE: Let us take it under advisement.

BY MR. WECHSLER:

Q Did you tell Mr. Thornton on or before March 2, 1966, that the redemption date for the debentures would be April 8, 1966?

A I did not.

Q Do you know how Mr. Thornton knew that the redemption date would be April 8, 1966 on March 2, 1966?

A Mr. Thornton was aware of discussions with respect to a time schedule that was being discussed as between Boeing representatives, our investment bankers, their legal counsel and Boeing legal counsel.

Q Do you know who made him aware of those discussions?

A Mr. Thornton was in attendance at the meetings where the discussions were taking place. The names of

the participants of that meeting are already set forth in the answers to the interrogatories.

Q In answer to Interrogatory No. 12, I had understood from that, that the parties present to the fixing of the dates for publication was yourself, Mr. Olsen and investment banking advisers. Is there some other meeting you are referring to at which Mr. Thornton was present which fixed the redemption date?

A As indicated in the answer to Interrogatory 5, under the caption, "March 2nd and 4th," you will note that Mr. Thornton was in attendance at the meetings involved with the investment bankers and legal counsel.

Q Were you also present at the meetings at which Mr. Thornton became aware that April 8th had been set as the redemption date?

A I was at the meeting at which time schedules were being discussed, at which time schedules did indicate, as you say, April 8th, both of those dates were on the schedules being discussed.

Q Was that date set on March 2, 1966?

A We were reviewing schedules that did have that date.

Q Does it refresh your recollection on March 2, 1966, according to Interrogatory No. 11, Mr. Thornton instructed

the Chase Manhattan Bank that the redemption date is April 8, 1966? Does that refresh your recollection as to the date when the redemption date was fixed?

A As I say, we were working with a time schedule on March 2nd that had the April 8th redemption date in it, but, as indicated in Interrogatory 12, that time schedule was subject to modification.

Q Subject to modification, was it fixed as April 8th on March 2, 1966?

A Unless we changed it.

Q Did there come a particular date when you fixed it no longer subject to change?

A It would be that point in time when the publication was released to the newspapers.

Q Up until that point, you could have changed it?

A Yes, we could have recalled the publication notice.

Q Did you have any meetings after March 2, 1966 with a view toward changing the date of redemption from April 8th?

A We were in constant meetings from March 2nd to the remainder of that week and into the following week.

Q Up until what point in the following week were you in constant discussion?

A We were in constant discussion in regard to the

overall financing program, during the remainder of that week, into the weekend and into the following week.

Q Are you familiar with Section 810 of the New York Stock Exchange Company Manual?

MR. GILLESPIE: Are you asking him if he is familiar with it as of today?

MR. WECHSLER: Yes, I will start with that question.

A I have read it.

Q Had you read it as of March 2, 1966?

A My recollection was that I was relying on investment banking, investment bank counsel and the company's legal counsel in this particular area.

Q Do you recall whether you had read it as of March 2, 1966?

A I don't recall whether I had read it.

MR. GILLESPIE: I might call attention to the copy you furnished here is dated May 15, 1967. There may have been some earlier copy.

MR. WECHSLER: Would you mark this copy that I have shown the witness as Plaintiff's Exhibit 6?

(Section 810 of New York Stock Exchange Company Manual marked Plaintiffs' Exhibit 6 for identification, as of this date.)

Q Do you know whether any steps were taken by Boeing to comply with any publicity requirements for the New York Stock Exchange?

MR. DOBBIN: I object to that question because I think it was answered fully by the interrogatory.

It is page 18, Interrogatory No. 9.

MR. WECHSLER: If by saying it was fully answered, do you refer to the section, that Section 810 of the Manual did not govern the contractual agreement between Boeing and its debenture-holders? Then I have to differ with you as to whether it was answered or not. That interrogatory merely states that you are not, as a matter of law, obligated to comply. But what I am interested in is whether you, in fact, did attempt to comply or what steps you took, and that is not answered in that interrogatory.

MR. GILLESPIE: One of the problems, Mr. Wechsler, arises from the fundamental conflict that exists between the plaintiffs and the defendants in this area. Your belief that we were required to do it and our belief that we were not required to do it. Perhaps if you want to find out the fact of what was done, I would have no objection.

MR. WECHSLER: That is what I am interested in. Whether you, in fact, did or did not comply. We are not interested in whether you think you had to comply.

MR. GILLESPIE: As soon as you put the question, what did you do to comply, you are assuming that it was complied.

MR. WECHSLER: As a fact, you may admit that you did not comply.

MR. GILLESPIE: The difficulty is the use of the word "comply," and I will have to object to the form of the question.

Q Did Boeing Corporation, to your knowledge, issue a general news release on March 2, 1966, regarding the redemption of the debentures?

A The answer, again, is contained --

Q Can't you just answer no, instead of referring to the interrogatories?

A I think the answer is contained in the answer to the interrogatory on the basis that there is no mention --

Q There is no question as to whether a general news release was issued on March 2, 1966.

Was a general release issued on March 2, 1966?

A My recollection is that it was not.

Q Was a general news release issued by Boeing at any time during 1966, stating the date of redemption of the debentures?

MR. DOBBIN: I object to that question as being answered by the interrogatory, specifically, Interrogatory No. 9.

MR. WECHSLER: I don't know that is the identifical question that I asked, but it does refer to a news release.

Q Do you know when the Stock Exchange was notified that April 8th had been selected as the redemption date?

MR. DOBBIN: I object to the question as having been answered by the interrogatories.

On page 22, in answer to Interrogatory 13.

MR. WECHSLER: That is not the same question that I asked the witness. The question was whether Boeing inquired of the New York Stock Exchange with respect to the publicity required of it.

MR. DOBBIN: Would you read the question back, please?

(The question was read.)

Q My question is when were they notified?

MR. GILLESPIE: The answer is in the answer

to the interrogatory.

MR. WECHSLER: If the witness wants to read the interrogatory, that will be all right.

MR. GILLESPIE: Off the record.

(Discussion off the record.)

Q Do I understand it, then, that referring to Interrogatory 13, the New York Stock Exchange, to your knowledge, was not notified before March 7, 1966, of the date selected for making the call?

A It is my understanding.

MR. WECHSLER: I have no further questions.

(Time noted: 5:00 p.m.)

Subscribed and sworn to before me

this ____ day of _____, 1969.

C E R T I F I C A T E

STATE OF NEW YORK)
: ss
COUNTY OF NEW YORK)

I, KENNETH SOFRONSKI, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That HAROLD W. HAYNES, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 30 day of April, 1969.

KENNETH SOFRONSKI

I N D E X

WITNESS

PLAINTIFFS'	EXAMINATION BY	PAGE
Harold W. Haynes	Mr. Winer	4
	Mr. Wechsler	99

EXHIBITS

PLAINTIFFS'		FOR IDENT.
1	Draft of 6/28/61, entitled, "Four and one-half per cent subordinated convertible debentures"	10
2	Memorandum dated July 20, 1961	15
3	Memorandum entitled, "Bond indenture restrictions," dated March 10, 1965	74
4	A certificate of the assistant secretary, H. V. Kohr, as to an extract from the minutes of the meeting of the board of directors of Boeing held on April 4, 1960	79
5	The Boeing Company capital stock history, dated 7/1/58 to 3/1/66	84
6	Section 312 of New York Stock Exchange Company Manual	192

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

WILLIAM R. VAN GEMERT, et al., :

Plaintiffs, :

-against- :

THE BOEING COMPANY, et al., :

Defendants. :

----------x

Continued deposition of defendant THE BOEING COMPANY, by HAROLD W. HAYNES, taken by plaintiffs pursuant to notice and stipulation dated April 4, 1969, at the offices of Messrs. Davis Polk & Wardwell, 1 Chase Manhattan Plaza, New York, N. Y. 10005, on April 10, 1969, at 1:00 p.m., before Kenneth Sofronski, a Shorthand Reporter and Notary Public of the State of New York.

ks/gp/3

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Of Counsel

ALSO PRESENT:

MRS. HANNA HALE,
35 Cornell Drive,
Great Neck, N. Y.

oOo

H A R O L D W. H A Y N E S, recalled as a witness by plaintiffs, having been previously sworn, resumed the stand and testified further as follows:

MR. WINER: Mr. Gillespie, would you hand the witness a copy of Plaintiffs' Exhibit 4, please?

MR. GILLESPIE: I have done so.

EXAMINATION (Cont.) BY MR. WINER:

Q Mr. Haynes, Exhibit 4 refers to only one appraisal, that by Manufacturers Mutual Fire Insurance Company.

Have you a copy of that appraisal here?

A No.

MR. GILLESPIE: We will produce it. We don't have it here.

Q Did you use that appraisal in arriving at the figure of $15,250,000 which is the figure you gave in Exhibit 4?

A Are you asking did I use that appraisal in making the computation of the $15,250,000?

Q That is correct.

A The answer to that is no.

Q Did you use any other appraisal in arriving at your figure?

A The answer to that is no.

Q Mr. Haynes, on page 4 of the minutes, being Exhibit 4, you stated that at the November 13th closing market price of 33 5/8 multiplied by the total number of shares that may be issued as a result of the agreement and adjusted for the amount the company will receive upon the exercise of Vertol stock options, the product would be approximately $15,250,000.

What adjustments had you in mind when you made that statement?

MR. GILLESPIE: Perhaps you might ask him how he calculated it.

MR. WINER: I will be glad to.

Q How did you calculate the 33 5/8 multiplied by the number of shares that would be issued and with a certain adjustment could come to $15,250,000?

MR. GILLESPIE: This is Plaintiffs' Exhibit 3 for identification.

A The calculation was based upon taking the total of 448,954 shares that were issued in connection with the acquisition of the assets of Vertol and 23,782 shares which would be issued to Vertol employees in connection

with the stock options granted to them prior to Vertol being acquired by Boeing. That total, if my arithmetic is correct, is 472,736 shares. That number was multiplied by 33 5/8. Again, if my arithmetic is correct, that gives you a value of $15,895,748.

As is indicated in the minutes to which you refer, an adjustment was then made for the amount the company would receive upon the exercise of the Vertol options, which amount was $644,514. When you deduct that from $15,895,748, you arrive at a value of $15,251,234. That was rounded to $15,250,000.

Q Are you through now with your answer?

A Yes.

Q Would you please read that back to me slowly?

(The answer was read.)

Q How did you arrive at the figure of $644,514 for the Vertol stock options?

A That figure would represent the price that the employee would pay the company on the exercise of those options.

Q According to Exhibit 5, and I refer you to page 2 and following, the actual acquisition prices under the Vertol options were 25.53, 26.51, 24.77 and so on.

Was there some reason for you to fix a price

which I believe you will find to be 27.1 a share on the 23,782 shares of Vertol?

MR. GILLESPIE: Do you understand the question?

THE WITNESS: Yes.

A I think you misinterpret the schedule, as I indicated, the $644,514 is the aggregate of the prices that would be paid as each of the 23,782 shares were issued to employees upon the exercise of their stock options. Those option prices varied. There was no standard option price.

Q You mean they varied as of the time you compiled or had compiled for you Exhibit 3; is that right? You mean they were at various prices at the time Exhibit 3 was compiled?

A Yes.

Q Did the prices vary afterwards?

A The prices were based upon the price that existed at the time the options were originally granted by the board of directors of Vertol.

Q In that event, can we cut this short and just say that the prices ultimately paid by the Vertol employees for their options should have been known to you at the time Exhibit 3 was compiled?

MR. GILLESPIE: When you say "should have been" --

Q I will say "were," if you prefer that.

Was the price that was ultimately paid on the exercise of the option prices known to you at the time you had Exhibit 3 compiled for you?

A Yes.

Q Do you recall whether there was some formula by which these prices were determined; that is, eighty-five per cent of market on a certain day, or ninety per cent or a hundred per cent of market on some day? Was there a formula?

A It is my understanding that the options, when originally granted by Vertol prior to its acquisition by Boeing, were granted at a price equal to ninety-five per cent of the market price on the date of the option grant.

Q Did you consult with Mr. Olsen on the selection of the date on which you took the Boeing price?

A Yes.

Q Did you discuss with him the status of the situation on November 13, 1959, when you took the price?

A I don't understand your question.

Q Was there a firm deal on November 13, 1959?

A As the minutes of the board indicate that November

13th was the day on which the directors and the management of the company decided to proceed with the transaction, that is, the transaction of negotiating for the acquisition of the assets of Vertol.

Q Was a resolution passed on that day?

A No, not that I am aware of.

Q Was an exchange rate of two shares of Boeing for three shares of Vertol fixed on that day?

A It is my understanding that management was authorized to undertake negotiations with Vertol for the acquisition of the assets of Vertol on a three-for-two exchange basis on that day.

Q Are there minutes of that meeting?

MR. GILLESPIE: You mean minutes of the board, formal minutes of the meeting?

MR. WINER: Yes.

A Not that I am aware of.

MR. WINER: If there are such minutes, I think we ought to know about them and have a copy. Is that agreeable to you, that if there are minutes of the meeting of that day, you will furnish us with a copy?

MR. GILLESPIE: We will look into it. It has been my understanding that there were no formal

minutes of the meeting, but we will look into it and let you know.

MR. WINER: I will ask that the plan and agreement of reorganization be marked as Plaintiffs' Exhibit 8 for identification.

(Plan and agreement of reorganization marked Plaintiffs' Exhibit 8 for identification, as of this date.)

Q I call your attention to Plaintiffs' Exhibit 8, page 1, and the wording is, "Plan and agreement of reorganization," dated as of this 18th day of January, 1960.

Do you know when this plan was actually signed by the officers of Boeing and Vertol?

MR. GILLESPIE: I think that is something we can try to find out for you, if Mr. Haynes does not know.

A I don't know.

Q Was there any signed letter of intent or preliminary agreement in existence, to your knowledge, prior to the existence and signing of Plaintiffs' Exhibit 8?

A I don't know.

Q Did you discuss with Mr. Olsen or any other counsel for the company the fact that Plaintiffs' Exhibit 8 had certain provisions which allowed one side or the

other to withdraw from the agreement? Did you discuss any such question with Mr. Olsen?

A I was not involved in any such discussions.

Q Did you discuss with Mr. Olsen whether the date on which this Plaintiffs' Exhibit 8 was signed or dated was a proper date to take for the valuation of the Vertol purchase?

A I do not recall specifically discussing whether that specific date was a proper date.

Q Did you discuss with Mr. Olsen or any other counsel whether the actual date of closing was a proper date for taking the price of the Boeing stock for the purposes of the computation which you gave to the directors on April 4th?

A I discussed the fact that we did propose to use the date of November 13, 1959 with Mr. Olsen, with our accounting counsel and with our investment bankers, all of whom I am sure were aware of all the other dates involved in the acquisition of the assets of Vertol.

Q Did anybody among these people say to you that November 13, 1959 was a proper date?

A Yes.

Q Who was that?

A Mr. Olsen, our accounting counsel and our invest-

ment bankers.

Q According to page 5 of the minutes, Exhibit 4:

"Upon questions from one of the directors, Mr. Haynes stated that a calculation had been made as to the minimum value that could be placed on the assets of Vertol without an adjustment in the conversion price being required."

Do you recall who that director was?

A I do not.

Q Did you make that calculation there or did you have it with you?

A I don't recall. Probably the calculation had been made previously.

Q Did you sign or approve the Pennsylvania excise tax return which was filed upon Boeing's taking over Vertol?

A I don't recall.

Q According to Exhibit 4 you stated, and I refer you to the bottom of page 2 of those minutes:

"Mr. Haynes stated, however, that the book value of the tangible assets will be used for the purpose of computing the Pennsylvania state excise tax payable as a condition to qualification to do business in Pennsylvania."

What was the requirement of the Pennsylvania state excise tax which you were fulfilling by giving the book value of the tangible assets?

MR. GILLESPIE: I must object to that question. I would like to have it read back first.

(The question was read.)

MR. GILLESPIE: If you know.

A I don't know.

Q Did you know at that time?

A I probably had an idea at that time.

Q Finally, on page 2 of the Exhibit 5, it appears that the sum recorded in your capital stock history, as issued upon the acquisition of Vertol, was $6,594,885.

Was that the figure taken in the pooling of interests computation as the value of the Vertol acquisition?

MR. GILLESPIE: Would you read the question back?

(The question was read.)

MR. GILLESPIE: You may answer.

A I understand the question. In fact, you had better repeat the question because I don't think it is phrased in a proper manner.

Q What does that figure of $6,594,885 represent?

A It represents the value in the capital stock account on the books of Vertol. The Boeing that was issued to the capital stock account of Vertol would be the then outstanding shares of Vertol and that figure would represent the value of those shares as it appeared on Vertol's books.

And under the pooling of interests concept, as is indicated in the minutes, that value would be transferred on to Boeing's books.

Q Do you remember as of what date you took this figure from the Vertol books?

A My recollection would be that it would be March 31, 1960.

Q Would you please investigate that and let us know whether that answer is correct?

MR. GILLESPIE: We will.

MR. MEHEN: I have no further questions.

MR. GILLESPIE: I am delighted we are finished. That concludes the examinations of Messrs. Haynes and Olsen.

(Time noted: 1:45 p.m.)

Subscribed and sworn to before me this ____ day of _____, 1965.

[illegible]

C E R T I F I C A T E

STATE OF NEW YORK)
: ss
COUNTY OF NEW YORK)

I, KENNETH SOFRONSKY, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That I reported the continued deposition of HAROLD W. HAYNES (pages 109-121) and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 30 day of April, 1969.

KENNETH SOFRONSKI

I N D E X

WITNESS

PLAINTIFFS'	EXAMINATION BY	PAGE
Harold W. Haynes	Mr. Winer	111

EXHIBITS

PLAINTIFFS'		FOR IDENT.
8	Plan and agreement of reorganization	117

Re: Van Gemert v. Boeing

Corrections in the
Deposition of
H. W. Haynes

Page	Line	Change
4	12	change complete to meet
6	17 - 19	meaning is unclear
9	13	strike comma after which
11	2	change certainly is to concerns
	3	change periods to period change and to from change dates to date
	4	change periods to period
12	19	change debentureholder to debentureholders
14	13	change periods to period
	15	change conversion to conversions
18	1	change equitable to equity
	20	change equitable to equity
20	7	change covenance to covenants
	22	change of the to other
22	23	change debts to debt
24	22	change the financial chronicle to The Commercial and Financial Chronicle
25	4	change the commercial and financial chronicle to The Commercial and Financial Chronicle
26	18	change requirment to requirements
29	4	change dscussing to discussing

Page	Line	Change
29	14	change is to are
31	19	meaning is unclear
34	16	change to to could
37	25	change the period to a comma
39	15	change noticed to mentioned
	18	change consideration to call of the debentures
	20	strike period add and
	21	strike capital A
		change That to that
41	7	after office insert or
	8	add comma after to
	8	change later to latter
42	4	after the add minutes of
	21	change statements to statement
48	22	change was to were
49	10 - 11	change to read as follows: ". . . the President, Vice President-Finance or Treasurer of the Company, or anyone of such officers,
	15	after the insert 4-1/2% convertible subordinated debentures...."
50	6	change specially to specifically and change specifics to provisions
56	5	after selection insert made

Page	Line	Change
57	1	change includes to included
61	15	insert quotation marks before Mr.
		after matters insert with Chase
	17	after New York Times insert quotation marks
62	8	meaning is unclear
64	14	after Mr. Olsen strike comma insert and the
	15	strike in insert with
70	6	strike in insert until
71	16	strike were insert was
72	9	strike by insert with
74	14	change 1965 to 1961
	19	change 1965 to 1961
75	20	change in to the
78	15	change with to for
80	16	change convertible subordinated debentures to Convertible Subordinated Debentures
	18	change debentures to Debentures and strike comma
	19	change company to Company
	10	change indenture to Indenture
	23	change indenture to Indenture after required add . . . ."
81	20	insert comma after conclusion
81	21	change and to an

Page	Line	Change
83	7	change 498 to 281,498
87	23	change 1,052 to 1,042
91	20	change Fillon to Filion
92	12	change bottom to top
94	21	strike comma after lawsuit
97	25	strike comma after options and insert to
98	1	strike the before Vertol and strike comma after employees
	16	strike comma after Vertol
100	1	change of to at
	5	change to to at
	6	change was to were
101	21	change to to through
102	4	change 8 to A-
	12	after banking insert counsel, the
		change bank to bankers' legal
	22	change 8 to A-
103	10	change 8 to A-
104	8	after complied strike period insert with.
108		change Exhibit 1 to read as follows: "4-1/2% Subordinated Convertible Debentures"
		Exhibit 3 change 1965 to 1961
		Exhibit 4 change assistant secretary to Assistant Secretary

Page	Line	Change
		after 1960 insert with the extract attached thereto
		Exhibit 6 change 8 to A-
		after Manual insert dated May 15, 1967
111	14	change Manufacturers to Manufacturer's
114	9	change were to was
115	25	insert comma after indicate strike that
119	4	change questions to question
	8	after required insert . . . .
	23	change state excise to State Excise
	24	change tax to Tax
121	3 - 7	meaning unclear

P Ex 3 - Excerpts From Deposition of Harold F. Olsen

EXHIBIT P-3 - EXCERPTS FROM DEPOSITION OF HAROLD F. OLSEN

* * *

H A R O L D F . O L S E N , called as a witness by plaintiffs, having been first duly sworn by the Notary Public (Kenneth Safronski), testified as follows:

EXAMINATION BY MR. WECHSLER:

Q What is your name and address?

A Harold F. Olsen. 8875 Overlake Drive, West Bellevue, Washington 98004.

Q What is your present position with The Boeing Company?

A I am not employed by The Boeing Company. I am a partner in a law firm; Holman Perkins Coie Stone & Olsen. My firm is general counsel for The Boeing Company.

Q Your firm was general counsel for The Boeing Company on February 24, 1966?

A Yes, sir.

Q According to the interrogatories, you attended a meeting on February 24, 1966?

A Yes, sir.

Q That meeting was with reference to the calling of the debentures?

A That was one of the subjects of the meeting, yes.

Q Can you tell us the substance of your discussions at that meeting?

A The meeting was held in Mr. Haynes' office at the Boeing plant. He reviewed the results of meetings he had had the prior week in New York with the company's investment bankers and generally outlined a proposal to obtain additional financing for the company through the public issue of either additional stock or securities, convertible into stock, possible time schedules for accomplishing this additional financing, various of the consideration that he had discussed with the investment bankers involved in these proposals.

The call of the debentures was one of the items that was discussed. That is about a summary of the meeting.

Q Were specific dates as to the call for redemption discussed?

A At the meeting on the 24th, I believe not, but it is possible that they were.

Q Did you also attend a meeting at which the calling of the debentures was discussed on February 27, 1966?

A Yes, sir.

Q Give us the substance of the discussions with reference to the debentures at that meeting.

A This was a meeting held at Mr. Allen's home. By that time we had discussed with the investment bankers

and their counsel possible time schedules for the financing and the call of the debentures. I had prepared a draft of resolutions for the forthcoming board of directors' meeting. I reviewed the timing schedule and these resolutions with Mr. Allen. As I indicated, one of the resolutions was a resolution authorizing the officers of the company to make the call. I can't recall that we had any specific discussions concerning that, but since it is one of the papers I reviewed with him, I am sure we did.

Q When had you discussed the time schedule with the investment bankers prior to February 27th?

A By telephone, perhaps on February 24th; if not then, on February 25th.

Q Who did you speak to by telephone?

A Mr. Townsend, of First Boston Corporation, and Mr. Ward Foshay, of Sullivan & Cromwell, the underwriters' counsel.

Q Did you discuss a specific date or dates for redemption of the debentures with them?

A Yes, I am quite sure I did.

Q Do you recall what dates they were?

A At that time we were discussing first publication of March 28th and redemption on April 6th. These were tentative dates.

A Did you prepare the Boeing 1966 financing tentative timetable which I am handing you now?

A Yes, sir.

MR. WECHSLER: Could we have that marked Plaintiffs' Exhibit 7 for identification?

(Boeing 1966 financing tentative timetable marked Plaintiffs' Exhibit 7 for identification, as of this date.)

MR. WECHSLER: The witness prepared the first page only of Plaintiffs' Exhibit 7.

Q Did you attend the board meeting of Boeing on February 28, 1966?

A I attended part of it.

Q Did you make a presentation to the board with reference to the calling of the debentures?

A Yes.

Q Do you recall, in substance, what you said to the board?

A I distributed to the board members copies of drafts of resolutions relating to generally all of the subjects that are listed on that time schedule. One of the resolutions was the resolution that was ultimately adopted by the board. As part of my presentation of all of these matters, I explained that this resolution would authorize

the officers named in the resolution to make a call of the debentures on a time schedule to be determined by them.

Q Was there any discussion with reference to the dates contained in the tentative timetable by the directors or by you at that meeting?

A Yes.

Q What was the substance of that discussion?

A I can't recall specifically, except that the timing of the entire financing was discussed. I recall pointing out that for filing of a registration statement with the Securities and Exchange Commission, the schedule was considered to be very tight. I don't recall that there were any discussions concerning the dates for redemption of the debentures.

Q Was there any discussion in which you participated on or after February 28th, at which a date other than March 28th was considered for the expiration of the conversion rights of the debentures?

A Yes.

Q When did that occur?

A On March 2nd, as is indicated on page 8 of the answer to the interrogatory.

Q Who was present at that discussion?

A The individuals named on page 8.

Q I don't believe there is an indication which of the individuals were present at that particular meeting on March 2nd.

The interrogatory indicates that a variety of people were present at meetings taking place between March 2nd and March 4th. Can you recall the ones that were present at the meeting of March 2nd to which you refer?

A This is a little difficult because, as is indicated, these meetings took place throughout this time period and some individuals attended part of the meetings and some did not. To the best of my recollection, the individuals who were in the meeting most of the day on the 2nd would include Mr. Haynes, Mr. Thornton, myself, Mr. Townsend, Mr. Larry, Mr. Campbell, Mr. Jones, Mr. Boyer, Mr. Morehouse, Mr. Fitzgerald, Mr. Foshay and Mr. Darrell.

Q At the meeting of March 2nd, to which you are referring, what was said and by whom, as best you can recall, with reference to the expiration of the conversion rights on the debentures?

A One of the first orders of business of that meeting was to prepare a more detailed time schedule for all of the events that were anticipated in the financing pro

gram. The call of the debentures was considered a part of the total program. We discussed those dates along with others. It was at this meeting that the tentative dates were changed to first publication on March 8th, expiration of the conversion privilege on March 29th. I am quite sure it was March 29th and the redemption on April 8th. These were the dates that were finally used, the ones I am referring to.

Q Was there any discussion at the board meeting of February 28th or during the meetings of March 2nd to 4th with reference to methods of giving notice other than those required by the indenture to debenture-holders?

A Yes.

Q Tell us the substance of the discussion of each meeting with reference to that.

A I don't believe there were any discussions at the board meeting. At the meeting on March 2nd we discussed where the publication should be made, and now the discussion included reference to the fact that the indenture required publication only twice in the newspaper of general circulation in the Borough of Manhattan. A decision was made that publication should be made in all editions of The Wall Street Journal.

MR. GILLESPIE: By that you mean the

national editions?

THE WITNESS: Yes.

Q Was there discussion at that meeting of publicity other than the publication as you just described?

A I don't recall that there was.

Q In answer to Interrogatory 13 on page 22, it is indicated that you had a conversation with Mr. R. N. Shriver of the New York Stock Exchange on February 28, 1966.

Would you tell us the substance of that conversation, as best you can recall, what you said to him and what he said to you?

A The purpose of the call was to review with the Exchange some of the dates in our overall financing plans and to obtain the approval of the Exchange for those dates. Such matters as how many days between a record date to some other events. My recollection is that I reviewed with him the dates that are on the time schedule that has been marked as Exhibit 7. On a preliminary and confidential basis.

My further recollection is that he approved the dates that I discussed with him.

Q Does that exhaust your recollection with reference to that telephone conversation?

A Yes.

Q In that same Interrogatory 13, it is indicated that on March 1st you had a conversation with a Mr. Raftery of the Exchange.

Could you tell us the substance of that conversation?

MR. DOBBIN: I object to the question. I think it is answered by Interrogatory 13.

MR. GILLESPIE: I have no objection if you want to ask him if there was anything in addition to what is stated in the answer to Interrogatory 13 as to the telephone conversation between himself and Mr. Raftery.

MR. WECHSLER: I will rephrase the question.

Q Is there anything in addition to the sentence in Interrogatory 13 which discusses your conversation with Mr. Raftery on March 1st, which was said between you and Mr. Raftery?

A I think not. It was a very short telephone call. He made a specific inquiry and I gave a specific answer.

Q It is indicated in Interrogatory 13 that on March 7, 1966, you called the Exchange.

Would you tell us who you spoke to at the Exchange on March 7th?

A Yes, I believe it was again Mr. Raftery but I

could not be certain.

Q Do you remember the time of the day that it was?

A I can be sure it was -- I would be relatively sure it was in the morning.

MR. GILLESPIE: In the morning of Pacific Time?

THE WITNESS: Yes.

Q What was the substance of your discussion with Mr. Raftery?

A I advised him that Boeing was proceeding to call the debentures and I gave him the specific dates of the call.

Q Is that the entire substance of your discussion?

A Not quite. I believe he asked that we send him a copy of the call, which I told him we would do, and as the answer to Interrogatory 13 indicates, the Chase Bank was asked to send a copy over to the Stock Exchange, which the bank did.

Q At any time during March of 1966, did you have discussions with anyone with reference to extending the time for conversion with reference to the debentures?

A Yes.

Q With whom did you have your first such discussion or your discussion, if there was only one?

A Mr. Haynes.

Q Was there anyone else present?

A Probably Mr. Thornton. I am quite certain I had conversations with Mr. Thornton also.

Q Do you know what date that took place?

A I can't be certain. I think it was either March 28th or March 29th or perhaps on both dates. I may also have had conversations with them on the 30th and 31st.

Q What did you say to him and what did he say to you?

A Mr. Haynes asked if there was any way the company could extend the redemption date. I advised him that, in my opinion, there was not.

Q Did he tell you why he was interested in knowing why the date might be extended?

A Yes, I am sure he indicated that some of the debenture-holders had not exercised their privilege of conversion prior to the expiration of that privilege, and he was interested in knowing whether the expiration date could be extended so that they could be given an opportunity to exercise their conversion privilege.

Q Did you discuss with him the basis for your opinion?

A I am sure I did.

Q What did you tell him?

A I think the substance of my advice, generally, was that the indenture constituted the contract between the company and the debenture-holders. That the company had complied with the provisions of the indenture in calling the indentures for redemption. That an extension of the date for expiration of the conversion privilege might constitute waste of corporate assets, that if the dates were extended and additional stock issued to debenture-holders who had not presented or exercised their conversion privilege prior to the expiration date originally fixed, might not be validly issued stock, and that there would be risks of minority stockholder suits if the conversion privilege expiration date were extended.

Q Could you tell us what you meant by "waste of corporate assets"?

A That is kind of a technical, legal term.

It would be the issuance of stock for which there was no legal obligation.

MR. WECHSLER: I conclude.

BY MR. WINER:

Q Were you ever consulted with respect to the filing of 8-K's by the company?

Re: Van Gemert v. Boeing

Corrections in the
Deposition of
Harold Olsen

Page	Line	Change
5	9	After financing insert and
5	10	Change consideration to considerations
6	24	Change March 28 to March 8
9	16	Change Larry to Laeri
10	19	Strike now
10	21	Change the to a
11	9	After Exchange insert prior to the Board meeting
11	19	Strike the period after 7 and continue the sentence
13	4	Change can to cannot
13	4	After sure insert if
15	6	Change period to semicolon Change That to that
15	8	Change period to semicolon Change That to that
15	10	Change comma to semicolon
15	14	Change comma to semicolon
16	14	Change H.B. to H.V.
17	8	Change it to there
20	5	Change That to [t]hat
20	7	Changein the to and
20	7	Change company to Company
20	8	Change entered to treated After interests ad . . . .

* * *

P Ex 4 - Proxy Statement

EXHIBIT P-4 - PROXY STATEMENT

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BOEING AIRPLANE COMPANY

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NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

May 3, 1960

To the Stockholders:

NOTICE IS HEREBY GIVEN that the Annual Meeting of the Stockholders of Boeing Airplane Company, a Delaware corporation, will be held on Tuesday, May 3, 1960, at 11:00 a.m., Pacific Standard Time, at the office of the Company at 7755 East Marginal Way, Seattle, Washington, for the following purposes:

(1) the election of a Board of Directors,

(2) the transaction of such other business as may properly come before the meeting.

Pursuant to the By-Laws, the Board of Directors has fixed the close of business March 17, 1960, as the record date for the determination of the holders of the stock of the Company entitled to notice of and to vote at the meeting.

So far as the Management is at present aware, no business will come before the meeting other than the matters set forth above.

J. E. PRINCE
Secretary

Seattle, Washington
March 7, 1960

If you cannot be present at the meeting personally, it is requested by the Management that you execute and return the enclosed proxy in favor of William M. Allen, C. L. Egtvedt and Dietrich Schmitz, being the President, the Chairman and another Director of the Company, respectively.

INSTRUCTIONS FOR SIGNING PROXY

The signature should correspond with the name appearing thereon. If the stockholder is a corporation or a partnership, give the full company name as appearing on the proxy and sign by a duly authorized officer or partner, showing his title. Where stock stands in more than one name, all holders of record should sign.

ANNUAL MEETING OF STOCKHOLDERS, MAY 3, 1960

PROXY STATEMENT

The following statement is made in connection with the solicitation of the enclosed proxy for the Annual Meeting.

At the date of this statement, the only business that the Management intends to present or knows that others will present is the election of thirteen Directors.

Election of Directors

The names of nominees of the Management for the office of Director of the Company are set forth below. It is believed that all such nominees are available for election. Shares represented by properly executed proxies in the accompanying form will be voted for such nominees. However, discretionary authority is reserved to vote such shares in accordance with the best judgment of the persons named in such proxies in the event that any person or persons other than the nominees listed below are to be voted upon at the meeting because of the unavailability of any nominee so listed. All the persons named below are Directors of the Company at the present time. All of the Directors are elected annually and each Director continues in office until his successor has been elected, or until he resigns or has been removed in the manner provided by the By-Laws of the Company. (The data as to the amount of stock and 4½% Convertible Subordinated Debentures due July 1, 1980, beneficially owned by each nominee is given as of February 1, 1960, and has been supplied by each nominee.)

Name	*Principal Occupation*	*Has Served as Director Since*	*Shares of Stock Beneficially Owned*	*Principal Amount of Debentures**
WILLIAM M. ALLEN	President of the Company	1934	12,561	None
WELLWOOD E. BEALL	Senior Vice President of the Company	1945	5,499	None
DARRAH CORBET	President, Smith Cannery Machines Company, Seattle, Washington, manufacturers of machinery for the fish canning and pulp industries	1939	674	$ 2,700
C. L. EGTVEDT	Chairman of the Company	1934	18,898	None
D. A. FORWARD	Retired Vice Chairman, The First National City Bank of New York, New York City	1946	530	$ 2,200
ARTEMUS L. GATES	Consultant	1948	648	None
FRED P. LAUDAN	Vice President—Manufacturing of the Company	1935	8,976	$20,000
PAUL PIGOTT	President, Pacific Car & Foundry Company, Renton, Washington, manufacturers of railway cars, motor trucks and other products	1936 to 1942 1957	330	None
WILLIAM G. REED	Chairman, Simpson Timber Company, Seattle, Washington, manufacturers of forest products	1951	1,446	None
J. E. SCHAEFER	Vice Chairman of the Company	1938	1,000	None
DIETRICH SCHMITZ	Chairman, Washington Mutual Savings Bank, Seattle, Washington	1934	5,406	None

Name	*Principal Occupation*	*Has Served as Director Since*	*Shares of Stock Beneficially Owned*	*Principal Amount of Debentures**
EDWARD C. WELLS	Vice President—Engineering of the Company	1951	3,834	None
J. O. YEASTING	Vice President—General Manager, Transport Division of the Company	1951	3,209	None

*Convertible until maturity, unless previously redeemed, into Capital Stock at the conversion rate of 2 shares of stock for each $100 principal amount of Debentures (equivalent to a conversion price of $50 a share) subject to adjustment in certain events as provided in the Indenture.

Remuneration of Directors and Officers

Set forth below is the aggregate remuneration (including awards under the Incentive Compensation Plan which relate to the year 1958 but were paid in 1959) paid by the Company during the year 1959: (1) to each Director and each of the three highest paid officers of the Company whose aggregate remuneration exceeded $30,000, and (2) to all Directors and officers of the Company as a group; and the estimated annual benefits each of such persons will be paid under the Company's retirement plan upon retirement at the normal retirement date:

Name of Individual or Identity of Group and Capacities in Which Remuneration Was Received	*Aggregate Remuneration*	*Estimated Net Remuneration After Deduction of Estimated Federal Income Taxes (1)*	*Estimated Annual Benefits Upon Retirement*
WILLIAM M. ALLEN President (2)	$124,519	$54,070	$ 22,607
WELLWOOD E. BEALL Senior Vice President	87,882	44,481	27,196
FRED P. LAUDAN Vice President—Manufacturing	43,542	28,270	11,413
EDWARD C. WELLS Vice President—General Manager, Systems Management Office and Vice President—Engineering (3)	76,165	40,768	24,676
J. O. YEASTING Vice President—Finance and Controller and Vice President—Finance (4)	59,028	34,554	14,808
DIRECTORS AND OFFICERS AS A GROUP	904,602		233,607

(1) Estimated Federal income taxes have been computed on the assumption that each individual is entitled to two exemptions, files a joint return, and claims the optional standard deduction, but does not give effect to any income other than remuneration from the Company.

(2) Pursuant to the terms of an Employment Agreement entered into with Mr. Allen on December 5, 1958, awards under the Company's Incentive Compensation Plan made to Mr. Allen are retained by the Company and will be paid to him over a ten-year period following his retirement from active employment with the Company subject to the fulfillment of certain conditions specified in the Agreement. On March 9, 1959, an award was made to Mr. Allen under the Incentive Compensation Plan for the year 1958 in the amount of $18,955. The amount of this award is not reflected in the above table.

(3) Vice President—General Manager, Systems Management Office through August 13, 1959, and Vice President—Engineering thereafter.

(4) Vice President—Finance and Controller through June 22, 1959, and Vice President—Finance until January 1, 1960, at which time Mr. Yeasting was appointed General Manager of the Transport Division of the Company.

STOCK OPTIONS GRANTED

On December 22, 1959, the Stock Option Committee, acting pursuant to the provisions of the Stock Option Plan adopted by the stockholders at the Annual Meeting held May 6, 1958, granted options to purchase capital stock of the Company of the par value of $5 a share to 55 employees, for a total of 71,000 shares at an option price of $30.50 per share, which was the closing price of capital stock of the Company on the New York Stock Exchange on the date the options were granted. The options are evidenced by agreements between the Company and the employees to whom such options were granted, the material provisions of which may be summarized as follows:

The options may be exercised at any time, and from time to time, after the expiration of two years after the date of the agreements, but only to the extent of the following cumulative percentages of the total number of shares covered by the options during the periods of time indicated:

2 years after date of agreement—up to 20%

4 years after date of agreement—up to 40%

6 years after date of agreement—up to 70%

8 years after date of agreement—up to 100%

The options expire ten years after the date of the agreements or on the date the employee's employment with the Company terminates, whichever first occurs, except that (i) If an employee retires under the Company's retirement plan or by reason of his health, the option may be exercised as to all remaining shares at any time within three months after such termination of employment, and (ii) If the employment of an employee is terminated by death the option may be exercised as to all remaining shares within one year after the date of employee's death by the person to whom the employee's rights under the agreement pass by the applicable laws of descent and distribution. The employee's rights under the option agreements are non-assignable and the number of shares is subject to adjustment for stock dividends, stock splits, or other changes in the capital stock of the Company. The options are restricted stock options within the meaning of that term as used in Section 421 of the Federal Internal Revenue Code.

The persons named in the table under the heading "Remuneration of Directors and Officers" to whom options were granted and the number of shares covered thereby and similar information with respect to all directors and officers as a group is set forth in the following table:

Name	*Present Office*	*Number of Shares*
WILLIAM M. ALLEN	President	7,500
WELLWOOD E. BEALL	Senior Vice President	4,750
FRED P. LAUDAN	Vice President—Manufacturing	1,000
EDWARD C. WELLS	Vice President—Engineering	4,250
J. O. YEASTING	Vice President—General Manager, Transport Division	4,000
DIRECTORS AND OFFICERS AS A GROUP*		39,750

*Pursuant to the provisions of the Plan, no options were granted to Directors who were not regular employees of the Company.

Outstanding Securities, Voting Rights and Revocation of Proxy

The Company has only one class of stock, namely, capital stock with voting rights, and had outstanding 7,521,911 shares of stock on January 31, 1960. The close of business March 17, 1960, has been fixed by the Board of Directors as the record date for the determination of the holders of stock of the Company entitled to notice of and to vote at the Annual Meeting.

Stockholders of the Company have cumulative voting rights as follows: At all elections of Directors of the Company each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of Directors to be elected, and he may cast all of such votes for a single Director or may distribute them among the number to be voted for or any two or more of them as he may see fit.

The enclosed proxy may be revoked by the stockholder at any time before its exercise.

Solicitation and Expenses of Solicitation

The enclosed proxy is solicited by the Management of the Company. All expense of soliciting proxies, including clerical work, printing and postage, will be paid by the Company.

The Company has retained Dudley F. King, 54 Wall Street, New York 5, New York, who, with assistants, will aid in the solicitation of proxies. Proxies will be solicited by personal interview, mail and telephone, and brokerage houses, other custodians and nominees will be requested to forward soliciting material to the beneficial owners of the stock held of record by such parties. It is estimated the cost for these services, including Mr. King's out-of-pocket expenses and compensation to assistants, will be $10,500. The Company will, in addition, reimburse parties holding stock in their name or in that of their nominee for their reasonable charges in sending proxies and proxy material to their principals.

By the order of the Board of Directors

WILLIAM M. ALLEN
President

March 7, 1960

EXHIBIT P-5 - MINUTES OF STATED MEETING

MINUTES OF STATED MEETING
BOARD OF DIRECTORS
BOEING AIRPLANE COMPANY

November 2, 1959

A Stated Meeting of the Board of Directors of Boeing Airplane Company was held at the Offices of the Company at Seattle, Washington, on Monday, November 2, 1959, commencing at 12:30 p.m. There were present at the meeting the following Directors of the Company:

William M. Allen
W. E. Beall
C. L. Egtvedt
Fred P. Laudan
Paul Pigott
Dietrich Schmitz
Edward C. Wells
J. O. Yeasting

Mr. Allen presided at the meeting and Mr. Prince performed his duties as Secretary.

Exhibit P-5 - Minutes of Stated Meeting

Mr. Allen then called for consideration of dividend action. It was reported that discussions have been in progress recently as to whether a change should be made in the dividend policy announced in the letter to stockholders dated July 3, 1956, which had provided for a 25¢ quarterly cash dividend to be supplemented by a small stock dividend annually during the period of the Company's requirements for substantial additional capital. Mr. Allen reported that the matter had been discussed informally with all of the Directors prior to the meeting, other than Mr. Schaefer; that it was recognized that this was a difficult problem and that he favored passing the stock dividend at least for this year and declaring an extra 25¢ cash dividend together with the regular 25¢ fourth quarter cash dividend. Mr. Yeasting reported on the views of those Directors not present, other than Mr. Schaefer, based on recent telephone conversations, as follows: Messrs. Forward, Reed and Corbet favored paying a 25¢ extra cash dividend and not declaring a stock dividend this year, although Mr. Corbet believed it was a very close question as to whether this was more advisable than declaring a 2% stock dividend and only a regular quarterly cash dividend; and Mr. Gates favored declaring a 2% stock dividend together with the regular 25¢ quarterly cash dividend. Messrs. Allen and Yeasting pointed out that under the terms of the Indenture Agreement dated July 1, 1958, for the 4½% Convertible Subordinated Debentures, there were not sufficient retained earnings to support a 4% "limited" stock dividend at this time and expressed their opinion that a stock dividend in excess of 2% was not

advisable. Messrs. Egtvedt, Pigott and Schmitz were definitely of the opinion that an additional cash dividend at this time was inadvisable in view of the low earnings of the Company even though it was expected that the earnings situation was improving and would continue to improve and that the cash requirements appeared to be decreasing. Mr. Pigott favored an elimination of a stock dividend for the year, payment only of the regular cash dividend and a statement of expectation that the cash dividends might be increased next year if the earnings of the Company justified such action. After considerable discussion, on motion made and seconded, it was unanimously

> RESOLVED, That out of the retained earnings of this Company, a regular quarterly dividend of twenty-five cents ($0.25) per share be and hereby is declared on the shares of capital stock of this Company issued and outstanding as of the close of business on November 12, 1959, such dividend to be payable December 10, 1959, to stockholders of record at the close of business on November 12, 1959.
>
> RESOLVED FURTHER, That such dividend be paid by the Company through First National City Trust Company of New York City and that there be deposited with said First National City Trust Company on or prior to December 10, 1959, sufficient funds for payment of said dividend.

Thereupon the following motion was made and seconded:

> RESOLVED, that a stock dividend of 2% is hereby declared on the issued and outstanding shares of capital stock of the Company payable December 17, 1959, to stockholders of record at the close of business on November 12, 1959, at the rate of one share for each 50 shares held on such date; provided, however, that fractions of one share shall not be issued in payment of such stock dividend, but in lieu thereof a certificate for the number of shares of capital stock, representing the aggregate of all such fractions of one share which otherwise would be issuable to the holders entitled thereto, shall be issued in the name of First National City Trust Company, or its nominee, as agent for such holders, and the fractions of one share so aggregated shall be sold by such agent, acting on behalf of and for the convenience of the holders of capital stock entitled to such fractions of one share, and the net proceeds thereof distributed on December 17, 1959, to those entitled thereto in accordance with their proportionate interest therein; and
>
> RESOLVED FURTHER, that the officers of this Company be, and they hereby are, authorized and directed to cause to be issued on the dates indicated in the foregoing resolution, certificates for so many whole shares of fully paid and nonassessable capital stock of this Company as may be required to be issued pursuant to the foregoing resolution; and

RESOLVED FURTHER, that First National City Trust Company, the transfer agent for the Company, be, and it hereby is, authorized and directed to issue and record on its transfer books stock certificates representing the additional shares of capital stock of the Company required to be issued pursuant to the foregoing resolutions, and that the authority of First National City Trust Company as transfer agent for the capital stock of this Company, be and hereby is extended by such additional number of shares with the same effect and for all intents and purposes as if the resolutions of appointment of the said transfer agent with respect to the Company's capital stock heretofore adopted by the Board of Directors of the Company had contained express reference to such additional shares and that the said resolutions be and be deemed to be modified accordingly and, as so modified, be in all respects approved, ratified and confirmed; and

RESOLVED FURTHER, that The First National City Bank of New York, registrar for the Company, be, and it hereby is, authorized and directed to register stock certificates representing the additional shares of capital stock of the Company required to be issued pursuant to the foregoing resolutions, and that the authority of The First National City Bank of New York as registrar for the capital stock of this Company be and hereby is extended by such additional number of shares with the same effect and for all intents and purposes as if the resolutions of appointment of the said registrar with respect to the Company's capital stock heretofore adopted by the Board of Directors of the Company had contained express reference to such additional shares and that the said resolutions be and be deemed to be modified accordingly and, as so modified, be in all respects approved, ratified and confirmed; and

RESOLVED FURTHER, that upon the payment of the stock dividend as hereinabove directed, the officers of this Company be and they hereby are authorized and directed to transfer from the retained earnings account to the capital stock account the sum of $29.875 per share for each of the shares of stock required to be issued and distributed pursuant to the foregoing resolutions, which sum is an amount approximately equal to the fair value of such shares determined by reference to the approximate market price of such shares on the New York Stock Exchange at the close of business on such Exchange on November 2, 1959, adjusted to give effect to the additional shares of capital stock to be outstanding upon the payment of said dividend, and includes the par value of $5.00 per share for each share so to be issued, and that thereafter the stated value of the capital stock of the Company shall be increased by such sum; and

RESOLVED FURTHER, that First National City Trust Company, or its nominee, be requested to act as agent for the holders of capital stock of the Company who would have been entitled to receive fractions of one share in payment of such stock dividend if the foregoing resolutions had not provided that fractions of one share shall not be issued, and to sell as soon as practicable after November 19, 1959, for the account of such holders the aggregate of all such fractions of one share which otherwise would be

issuable to the holders entitled thereto and to remit the proceeds therefrom to such holders in accordance with their proportionate interest therein; and

RESOLVED FURTHER, that application be made to the New York Stock Exchange for the listing, in addition to the shares of capital stock of this Company heretofore listed on the New York Stock Exchange, of the shares of the capital stock of this Company which are required to be issued pursuant to the foregoing resolutions, and of 214,976 shares of capital stock of this Company that may be issued to officers and employees of this Company in accordance with the terms of the Incentive Compensation Plan of the Company; and that William M. Allen, President, J O. Yeasting, Vice President-Finance, or J. E. Prince, Secretary of the Company, or any of them, is authorized to prepare, execute and file, or cause to be filed, on behalf of this Company, a stock listing application, amendments thereto, and any agreements relative thereto, and to appear before said Exchange and make such changes in said application or make amendments thereto and approve any agreements relative thereto deemed necessary and advisable to conform with the requirements for listing said shares of capital stock.

All present except Messrs. Pigott and Wells voted in favor of this resolution and the latter two voted against it. Whereupon Mr. Allen declared that the resolution was adopted.

Proof copies of a proposed November Stockholders Information were distributed and reviewed. It was agreed that further consideration should be given as to a statement on the 2% stock dividend.

Exhibit P-5 - Minutes of Stated Meeting

There being no further business to come before the meeting, the same was upon motion made and seconded adjourned.

J. E. Prince, Secretary

APPROVED:

President

X

EXHIBIT P-6 - BOEING'S CAPITAL STOCK HISTORY

3.67

④

BOEING AIRPLANE COMPANY
CAPITAL STOCK HISTORY
1934 -

Description	Shares	Amount	Per Share
Balance Forward December 31, 1961	7,982,430	$ 126,842,635.54	15.90
Issued to employees upon exercise of options.			
Vertol Div. employees (Jan 286, Feb 317, Mar 500)	903	24,434.28	27.06
Other employees (Jan 5550, Feb 2150, Mar 300)	6,000	183,000.00	30.50
Issued upon conversion of debentures (Jan 90, Feb 16, Mar 8)	120	6,000.00	50.00
March 31, 1962	7,989,453	127,056,069.82	15.90
Issued to employees upon exercise of options.			
Vertol Div. employees (Apr)	26	849.16	32.66
Other employees (May)	200	6,100.00	30.50
June 30, 1962	7,989,679	127,063,018.98	15.90
Issued to employees upon exercise of options.			
Vertol Div. employees (July 398, Aug 436)	834	18,247.92	21.88
Other employees (Aug)	300	9,150.00	30.50
September 30, 1962	7,990,813	127,090,416.90	15.90
Issued to employees upon exercise of options.			
Vertol Div. employees (Oct 1,007, Nov 459, Dec 103)	1,569	41,482.63	26.44
December 31, 1962	7,992,376	127,131,899.58	15.91
Issued to employees upon exercise of options.			
Vertol Div. employees (Jan 01, Feb 139, Mar 1,215)	2,105	62,208.13	29.57
Other employees (Jan)	200	6,100.00	30.50
[illegible], 1963	7,994,681	127,200,207.71	15.91

Exhibit P-6 - Boeing's Capital Stock History

THE BOEING COMPANY

CAPITAL STOCK HISTORY
1934 - to date

Description	Shares	Amount	Per Share
Balance forward 1963	7,994,761	$127,200,207.71	15.91
Issued to employees upon exercise of options.			
Vertol Div employees (April 599, May 261, June 101)	961	25,235.95	26.16
Issued under Incentive Comp. Plan	14,947	564,249.25	37.75
June 30, 1963	8,010,669	127,789,692.91	15.92
Issued to employees upon exercise of options.			
Vertol Div employees (July 203, August 26)	229	5,169.38	22.57
September 30, 1963	8,010,898	127,794,862.29	15.95
Issued to employees upon exercise of options.			
Vertol Div employees (Oct. 576, Nov. 104, Dec. 390)	1,070	32,189.22	30.08
Other employees (Dec.)	600	18,300.00	30.50
December 30, 1963	8,012,568	127,845,351.51	15.96
Issued to employees upon exercise of options			
Jan 200, Feb 700, Mar 4,050	4,950	150,975.00	30.50
March 31, 1964	8,017,518	127,996,326.51	15.96
Issued to employees upon exercise of options			
Apr 550, May 2,250, Jun 3,566	6,366	208,375.00	32.73
June 30, 1964	8,023,884	128,204,701.51	15.98
Issued to employees upon exercise of options			
July, 2,640; Aug., 2,110; Sept., 3,020	7,770	259,962.50	33.46

Exhibit P-6 - Boeing's Capital Stock History

THE BOEING COMPANY

CAPITAL STOCK HISTORY
1934 - to date

	Shares	Amount	Per Share
Issued upon conversion of Debentures			
July 10, August 8, September 146	164	8,200.00	50.00
September 30, 1964	8,031,818	$ 128,472,864.01	16.00
Issued to employees upon exercise of options			
October 3, 266, November 389, December 1, 171	4,826	184,581.50	38.25
Issued upon conversion of Debentures			
October 156, November 102, December 84	342	17,100.00	50.00
December 31, 1964	8,036,986	$ 128,674,545.51	16.01
Issued to employees upon exercise of options			
January 1,250, February 70, March 200, April 6,222	7,742	328,589.23	42.44
Issued upon conversion of Debentures			
January 152, February 70, March 42, April 94	358	17,900.00	50.00
Issued to employees under the Incentive Compensation Plan			
April 7,599	7,599	484,436.25	63.75
April 30, 1965	8,052,685	$ 129,505,470.99	16.08
Issued to employees upon exercise of options			
May 1704, June 11	1,795	83,813.72	46.69
Issued upon conversion of Debentures			
May 60, June 10	70	3,500.00	50.00
June 30, 1965	8,054,550	$ 129,592,784.71	16.09

Exhibit P-6 - Boeing's Capital Stock History

THE BOEING COMPANY

CAPITAL STOCK HISTORY
1934 — To Date

Description	Shares	Amount	Per Share
Balance forward June 30, 1965	8,054,550	$ 129,592,784.71	16.09
Issued to employees upon exercise of options			
July 750, August -0-, September 167	917	37,931.03	41.36
Issued upon conversion of debentures			
July 200, August 13,236, September 39,882	53,318	2,665,900.00	50.00
September 30, 1965	8,108,785	$ 132,296,615.74	16.32
Issued to employees upon exercise of options			
October 1,276, November 1,063, December 10,394	12,733	473,598.92	37.19
Issued upon conversion of debentures			
October 31,040, November 34,006, December 576	65,622	3,281,100.00	50.00
To charge capital stock with the balance of unamortized debt expense applicable to 4½% debentures converted into capital stock for the period 1959 through 1965		72,568.36*	
December 31, 1965	8,187,140	$ 135,978,746.30	16.61
Issued to employees upon exercise of options			
January 3,849, February 4,684, March 611	9,144	327,799.30	35.85
Issued upon conversion of debentures			
January 34,434, February 17,672, March 407,614, April and May 148	459,868	22,993,400.00	50.00
To charge capital stock with the balance of unamortized debt expense applicable to 4½% debentures as of March 31, 1966		200,458.69*	
March 31, 1966	8,656,152	$ 159,099,486.91	18.38

Exhibit P-6 - Boeing's Capital Stock History

THE BOEING COMPANY
CAPITAL STOCK HISTORY

Description	Shares	Amount	Per Share
Balance forward March 31, 1966	8,656,152	$ 159,099,486.91	18.38
Issued to employees upon exercise of options			
April 2,806	2,806	88,781.84	31.64
Issued to employees under the Incentive Compensation Plan			
April 3,726	3,726	559,831.50	150.25
May 1, 1966	8,662,684	159,748,100.25	18.44

Exhibit P-6 - Boeing's Capital Stock History

THE BOEING COMPANY
CAPITAL STOCK HISTORY

Description	Shares	Amount	Per Share
Balance forward March 31, 1966	8,656,152	$ 159,099,486.91	18.38
Issued to employees upon exercise of options			
April 2,806	2,806	88,781.84	31.64
Issued to employees under the Incentive Compensation Plan			
April 3,726	3,726	559,831.50	150.25
May 1, 1966	8,662,684	159,748,100.25	18.44

BOEING COMMON STOCK HISTORY
CUMULATIVE TO DATE
12/

Description	Shares	Amount	Share	Comments
Balance Forward (1959)	7,374,412	$ 115,539,019.62		
Issued upon conversion of debentures June, 1959 (none Apr. and May)	10	500.00	50.00	
	7,374,422	115,539,519.62	15.67	Amount transferred from retained earnings - Nov. 2 market price of $30.375 x 102 = 29.875
2% stock dividend (Nov. 2)	147,489	4,406,233.88	29.875	Incentive reserve adjusted for 2% stock dividend 231,108.39 shares at 1.02 = 235,730.56 shares.
December 31, 1959	7,521,911	119,945,753.50	15.95	214,976 shares listed with NYSE for Incentive Comp. Stock listed for Incentive Comp. listed but not yet issued - 235,730 shares.
Issued upon acquisition of Vertol	448,954	6,594,885.00	14.69	
Issued under Incentive Comp. Plan	702	20,136.50	25.75	Balance of shares available for issuance under Incentive Compensation Plan or Stock Option Plan 234,948.56 shares. Stock listed for Incentive Compensation Plan but not yet issued - 234,948 shares.
December 31, 1960	7,971,647	126,560,775.00	15.88	
Issued to Vertol employees upon exercise at 3/31/61	4,557	116,354.50	25.53	
March 31, 1961	7,976,204	126,677,129.60	15.88	
Issued to Vertol employees upon exercise of options through June 30 (April, 1156; May, 991; June, 211)	2,358	62,514.12	26.51	
June 30, 1961	7,978,562	126,739,643.72	15.89	
Issued upon coversion of debentures (July, 38; Aug., 64; Sep., 46)	148	7,400.00	50.00	
Issued to Vertol employees upon exercise of options through Sept. 30 (Aug., 2,238; Sep., 483)	2,721	67,394.10	24.77	
September 30, 1961	7,981,431	126,814,437.82	15.89	
Issued to Vertol employees upon exercise of options through Dec. 31 (Oct., 867; Nov., 130)	997	28,097.72	28.18	
Issued upon conversion of debentures (Dec)	2	100.00	50.00	
December 31, 1961	7,982,430	126,842,635.54	15.89	

December 31, 1961

Shares listed for Incentive Compensation Plan but not yet issued
234,948 less 104,443 (delisted for incentive)
relisted for stock options 130,505

Other listed shares reserved for:
Stock options (ex Vertol Division) 104,443
Stock options, Vertol Division 11,522
Conversion of debentures 610,750

Exhibit P-6, Boeing's Capital Stock History

843a

THE BOEING COMPANY

CAPITAL STOCK HISTORY

7/1/58 - 5/1/66

Description	Shares	Amount	Per Share	Comments -
Balance at 7/1/58	7,037,447	$ 97,884,588.40	$ 13.91	
Issued upon conversion of debentures through 11/19/58	960	48,000.00	50.00	
	7,038,407	97,932,588.40	13.91	
4% stock dividend	281,537	15,414,150.75	54.75	Amount transferred from retained earnings - Nov. 4, 1958 market price of $56.875 ÷ 104 - 54.75. Incentive reserve adjusted for 4% stock dividend 274,513.84 shares x 1.04 - 285,494.39 shares.
	7,319,944	113,346,739.15	15.48	
Issued upon conversion of debentures 11/20/58 through 12/31/58	62	3,100.00	50.00	1,022 shares issued upon conversion of debentures during the year.
To charge capital stock with the write-off of the balance of unamortized debt expense applicable to 4-1/2% debentures converted into capital stock in 1958		856.03*		
December 31, 1958	7,320,006	113,348,983.12	15.48	
Issued upon conversion of debentures Jan. 1959 (none Feb. and Mar.)	20	1,000.00	50.00	
Issued under Incentive Comp. Plan	54,386	2,189,036.50	40.25	
	7,374,412	115,539,019.62	15.67	Balance of shares available for issuance under Incentive Compensation Plan or Stock Option Plan 231,108.39 shares. Stock for Incentive Comp. listed with NYSE but not yet issued - 20,754 shares.

*Denotes decrease

DFB

DEFENDANTS EXHIBIT B - LETTER DATED APRIL 25, 1966 FROM MESSRS HOLMAN, MARION, PERKINS, COIE & STONE TO CHASE MANHATTAN BANK

V. 1 845a

HOLMAN, MARION, PERKINS, COIE & STONE

1900 WASHINGTON BUILDING
SEATTLE 98101

AREA CODE 206 MUTUAL 2-8770

LUCIEN F. MARION
DEFOREST PERKINS
J. PAUL COIE
CHARLES I. STONE
HAROLD F. OLSEN
FRANCIS E. HOLMAN
ANDREW M. WILLIAMS
WILLIAM M. HOLMAN
BURROUGHS B. ANDERSON
F. THEODORE THOMSEN
JOHN W. ELLIS
ROBERT S. MUCKLESTONE
LUCIUS H. BIGLOW, JR.
DAVID E. WAGONER
RICHARD E. WILLIAMS
H. WESTON FOSS
RICHARD E. WALKER

COUNSEL
FRANK E. HOLMAN
HOLLISTER T. SPRAGUE
WENDELL W. BLACK

FRED S. MERRITT
J. SHAN MULLIN
JAMES M. HILTON
DOUGLAS P. BEIGHLE
CALHOUN DICKINSON
J. DAVID ANDREWS
RICHARD R. ALBRECHT
PHILLIP E. GLADFELTER
GRAHAM H. FERNALD
THEODORE J. COLLINS
JOHN E. BIRARD
JOHN H. BINNS, JR.
WALTER W. EYER
WAYNE C. BOOTH, JR.
L. WILLIAM HOUGER

Dept's EXHIBIT
U. S. DIST. COURT
S. D. OF N.Y.

April 25, 1966

Trial exhibit

B

The Chase Manhattan Bank (National Association)
11 Broad Street
New York, New York 10015

Re: The Boeing Company 4½% Convertible
Subordinated Debentures due July 1, 1980

Dear Sirs:

We have acted as general counsel to The Boeing Company (hereinafter called the "Company") in connection with the proceedings relating to the redemption of all of the Company's issued and outstanding 4½% Convertible Subordinated Debentures due July 1, 1980 (hereinafter called the "Debentures") pursuant to an Indenture dated July 1, 1958 (hereinafter called the "Indenture") between the Company and The Chase Manhattan Bank, Trustee, and we have supervised corporate proceedings in connection with such redemption.

We have read the conditions precedent provided for in the Indenture relating to this opinion and to the redemption of the Debentures.

We have examined originals or copies, the authenticity of which has been established to our satisfaction, of such documents, corporate records and other instruments relating to the redemption of the Debentures as we have deemed necessary as a basis for this opinion.

In our opinion we have made or caused to be made such examination or investigation as is necessary to enable us to

express an informed opinion as to whether or not the conditions precedent provided for in the Indenture relating to the redemption of the Debentures have been complied with.

Based on the foregoing, but as to factual matters information as to which is in the possession of the Company based on the attached Officers' Certificate to Trustee pursuant to Sections 5.01 and 17.05 of the Indenture dated July 1, 1956, we are of the opinion that the conditions precedent provided for in the Indenture relating to the redemption of the Debentures have been complied with.

Yours very truly,

Holman, Marion, Perkins, Cole & Stone

DEFENDANTS EXHIBIT C - LETTER DATED APRIL 27, 1966 FROM MESSRS. DAVIS, POLK, WARDWELL, SUNDERLAND & KIENDL TO THE BOEING COMPANY

DAVIS POLK WARDWELL SUNDERLAND & KIENDL
1 CHASE MANHATTAN PLAZA
NEW YORK 5, N. Y.

CABLE ADDRESS
STETSON

847a

Klept's EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
treat exhibit
C

April 27, 1966

The Boeing Company
7755 East Marginal Way
Seattle, Washington

Dear Sirs:

You have requested our opinion regarding the recent call for redemption of all the Company's issued and outstanding 4 1/2% Convertible Subordinated Debentures, due July 1, 1980 (the "Debentures"). We have been furnished with copies of each of the following:

(a) The Certificate of Incorporation and By-laws of the Company as in effect on February 28, 1966 and as at all times thereafter to date.

(b) The Indenture dated July 1, 1958 between the Company and The Chase Manhattan Bank, Trustee, pursuant to which the Debentures were issued.

(c) Specimens of the Debentures.

(d) The resolution adopted by the Company's Board of Directors on February 28, 1966.

(e) The letter dated March 8, 1966 from the Treasurer of the Company to the Trustee which, among other things, established April 8, 1966 as the redemption date.

(f) The letters dated March 22, and March 28, 1966 from the Treasurer of the Company to the Trustee relating to the protection of conversion rights of holders of Debentures.

(g) The notice of redemption dated March 8, 1966, and affidavits from the Wall Street Journal relating to the publication of such notice in all editions on March 8, March 18 and March 28, 1966 and an affidavit from The New York Times relating to the publication of such notice on March 28, 1966.

(h) An Officer's Certificate relating to the absence of defaults in respect of Senior Indebtedness of the Company.

(i) An opinion of Holman, Marion, Perkins, Coie & Stone regarding the absence of restrictions relating to the redemption.

The Trustee has advised that, in accordance with the instructions of the Treasurer referred to above, the conversion rights of the holders of $115,400 principal amount of Debentures were protected even though such Debentures were not surrendered until after the close of business on March 29, 1966. The holders of $1,547,000 of the Debentures took no action either to convert or to protect their conversion rights even though on the basis of the closing sale price for the Capital Stock of the Company on March 29, 1966 the shares of such stock issuable in respect of each $100 of such Debentures had a value of $316.25 compared to a redemption price of $103.50. The market value for such shares has continued at substantially the same level. Funds necessary to effect the redemption of such Debentures were duly deposited with the Trustee in accordance with the provisions of the Indenture.

On the basis of the foregoing we confirm to you the following opinions which were heretofore orally expressed:

1. The Company has duly taken all necessary corporate proceedings to authorize the call of the Debentures for redemption on April 8, 1966.

2. The Debentures were duly and validly called for redemption on April 8, 1966 in accordance with the

authorization of the Company's Board of Directors and the provisions of the Indenture and the Debentures.

3. Holders of Debentures who did not, on or prior to March 29, 1966, give to the Trustee notice of their election to convert their Debentures into Capital Stock of the Company were not entitled to convert such Debentures after that date.

4. The officers of the Company had no authority under the resolution adopted by the Board of Directors on February 28, 1966 with respect to the redemption of the Debentures or under the provisions of the Indenture or by virtue of their offices to waive the provisions of the Indenture and the Debentures with respect to the time within which an election to convert Debentures had to be made, or otherwise to extend such time, or to change the date for redemption of the Debentures from that specified in the notice of redemption. The Board of Directors of the Company could not have authorized such waiver or extension of time to convert or change in the redemption date without serious risk of liability being imposed on them in the event a stockholder of the Company charged them with waste of corporate assets to the extent of the excess of the value of the shares reserved for unconverted Debentures over the redemption price of such Debentures.

5. The Company could legally and validly instruct the Trustee to accept elections to convert Debentures evidenced in accordance with the first paragraph of the letter of the Treasurer dated March 28, 1966 referred to above and shares issued upon conversions of Debentures covered by such elections were validly issued and were not subject to the preemptive rights of the holders of the Company's Capital Stock.

Very truly yours,

Davis Polk Wardwell Sunderland & Kiendl

WDTJr:mhm

NOV ... 19..
S. D. OF N. Y.

JUDGMENT (Filed November 30, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

JUDGMENT (SJR)

WILLIAM R. VAN GEMERT, ET AL,
Plaintiffs,

-against-

THE BOEING COMPANY (FORMERLY BOEING AIRPLANE COMPANY), ET AL,
Defendants.

: 66 Civ. 1320 66 Civ. 2384
66 Civ. 2385 66 Civ. 2640
: 66 Civ. 2736 66 Civ. 3005
66 Civ. 3054 66 Civ. 3403
: 67 Civ. 280 67 Civ. 1053
:

- X

The issues in the above ten consolidated actions having been brought on regularly for trial before the Honorable Sylvester J. Ryan, United States District Judge, on November 15, 16, 17 and 20, 1972, and at the conclusion of the evidence the Court having reserved decision, and the Court thereafter on November 29, 1973, having handed down its opinion directing the Clerk forthwith to enter judgment for defendants dismissing the complaints in the following ten actions on the merits with taxable costs and disbursements, it is,

ORDERED, ADJUDGED AND DECREED, that defendants, THE BOEING COMPANY (FORMERLY BOEING AIRPLANE COMPANY), ET AL, have judgment against the plaintiffs, WILLIAM R. VAN GEMERT, ET AL, dismissing the complaints in the following ten actions, 66 Civil 1320, 66 Civil 2384, 66 Civil 2385, 66 Civil 2640, 66 Civil 2736, 66 Civil 3005, 66 Civil 3054, 66 Civil 3403, 67 Civil 280 and 67 Civil 1053, on the merits with costs to be taxed.

NOV 30 1973

Dated: New York, N. Y.
November 30, 1973

Clerk

NOTICE OF APPEAL BY COMMITTEE FOR ALL PLAINTIFFS
(Filed December 28, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

WILLIAM R. VAN GEMERT, ALBERT A. HENNING, EDWARD E. HOUCHINS, NATHAN PEARLMAN, ELIAS A. CHARIOTT, CHARLES K. DAVIS, ANDREAL HOLDING CORP., SAMUEL A. WEISS, IRWIN L. ISERT, JACK KIRSCHNER, CHARLES FRIEDMAN, H. MICHAEL ALBERS, ABRAHAM STERN, EDWARD KEMPLER, SIMEON A. SCHLOSS, JR., MARY JANE SCHLOSS SILVERMAN, SIMEON A. SCHLOSS, JR. and MARY JANE SILVERMAN, Trustees under the Last Will and Testament of Floretta Schloss Wile, DAVID M. BOTSFORD, MRS. SAMUEL LEMLER, LOUIS DAVIS, MRS. LEONARD C. DILL, JR., JOSEPH SCHLAGMAN, NATALIE K. WIGLER, ANN LOUISE DIAMOND, SAMUEL CHARDAVOYNE, WILLIAM M. JONES, MR. & MRS. H. DIENMAN, MILTON HART, MARY LEVIN, FRANCES DAVIS, E. JULIAN DAVIS, ROBERT LEMLICH, ARTHUR FRISCH, MARIAN S. MITCHELL, VINCENTE J. BONNARD, HAROLD M. WHITE and MARGARET C. WHITE, MORRIS BERNSTEIN, WALTER L. EATON, ERNEST G. ANGEVINE, ABRAHAM PERCHICK, COMMITTEE FOR THE ESTATE OF MAX SCHNEIDER, an incompetent, FRANCIS H. SHOOBE, and ALBERT A. ARDITTI, GERTRUDE McNAUGHT, MRS. J. H. STEIN, JOAN S. BERMAN, J. DAVID STEIN, SARAH E. MORITZ, VIRGINIA W. STAUB, LOUIS BERGLAS, DR. JACK DIENER, DENNIS J. FINN, BERTHA J. WINER, JOANNE W. FINN and S. EDWARD MITTLER, for and in behalf of themselves and for all other holders of THE BOEING COMPANY 4-1/2% Convertible Subordinated Debentures, due July 1, 1980 who are similarly situated,

Plaintiffs,

-against-

THE BOEING COMPANY (formerly BOEING AIRPLANE COMPANY), THE CHASE MANHATTAN BANK, CLAIRMONT L. EGTVEDT, WILLIAM M. ALLEN, EDWARD C. WELLS, JAMES E. PRINCE, LOWELL P. MICKELWAIT, W. L. CAMPBELL, ARTEMUS L. GATES, CRAWFORD H. GREENEWALT, WILLIAM G. REED, D. E. SKINNER, THOMAS R. WILCOX, JOHN O. YEASTING and GEORGE H. WEYERHAEUSER,

Defendants.

----------x

66 Civ. 1820

NOTICE OF APPEAL

Notice of Appeal by Committee for All Plaintiffs

Notice is hereby given that the plaintiffs above named, for and in behalf of themselves and for all other holders of The Boeing Company 4-1/2% Convertible Subordinated Debentures due July 1, 1980 who are similarly situated, hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment, entered in this action on November 30, 1973, and from the Order directing the entry of such judgment, entered in this action on November 29, 1973.

The names of the parties to the judgment, and the names and addresses of their respective attorneys of record, are as follows:

Parties	Attorneys of Record
Defendants The Boeing Company and Thomas R. Wilcox	Davis Polk & Wardwell One Chase Manhattan Plaza New York, New York 10005 Holman, Marion, Perkins, Coie & Stone 1900 Washington Building Seattle, Washington 98101
Defendant The Chase Manhattan Bank	Dewey, Ballantine, Bushby, Palmer & Wood 140 Broadway New York, New York 10005
Committee for the Plaintiffs	Kass, Goodkind, Wechsler & Gerstein 122 East 42nd Street New York, New York 10017 Nathan, Mannheimer, Asche, Winer & Friedman 230 Park ~~295 Madison~~ Avenue New York, New York 10017 Irving Steinman, Esq. 11 Park Place New York, New York 10007
Plaintiffs William R. Van Gemert Albert A. Henning, Edward E. Houchins, Nathan Pearlman and Elias A. Chariott	Kass, Goodkind, Wechsler & Gerstein 122 East 42nd Street New York, New York 10017

Parties	Attorneys of Record
Plaintiffs Bertha J. Winer and Joanne W. Finn	Nathan, Mannheimer, Asche, Winer & Friedman 230 Park ~~295 Madison~~ Avenue New York, New York 10017
Plaintiff Dennis J. Finn	Krystow, Proby, Gay & Snowden 602 City National Bank Bldg. Miami, Florida 33130
Plaintiff Louis Berglas	Irving Steinman, Esq. 11 Park Place New York, New York 10007
Plaintiff Marian S. Mitchell	McClintock, Fulton, Donovan & Waterman 2150 Guardian Building Detroit, Michigan 48226
Plaintiff Dr. Jack Diener	Danzansky & Dickey 1120 Connecticut Avenue, N.W. Washington, D. C. 20036
Plaintiffs Gertrude McNaught Mrs. J. H. Stein, Joan S. Berman, J. David Stein, Sarah E. Moritz and Virginia W. Staub	Elson, Lassers & Wolff 11 South LaSalle Street Chicago, Illinois
Plaintiff S. Edward Mittler	Freedman Borowsky & Lorry Lafayette Building Chestnut Street at Fifth Philadelphia, Pa. 19106
Plaintiff Hanna Adler Hale	Henry S. Hale, Esq. 35 Cornell Drive Great Neck, New York
Plaintiff Henry J. Hoff	Arent, Fox, Kintner, Plotkin & Kahn 100 Federal Bar Building 1815 H Street Washington, D. C.
Plaintiffs Harold M. White, Margaret C. White, Morris Bernstein, Walter L. Eaton, Ernest G. Angevine, Abraham Perchick, Committee for the Estate of Max Schneider, Francis H. Shoobe and Albert A. Arditti	Epstein, Sachnoff & Schrager 105 West Adams Street Chicago, Illinois 60603
Plaintiff Arthur Frisch	Abraham Lillienthal, Esq. 271 Madison Avenue New York, New York

December 28, 1973

KASS, GOODKIND, WECHSLER
& GERSTEIN

By: /s/ Stuart D. Wechsler

A Member of the Firm
122 East 42nd Street
New York, New York 10017
(212) 867-8570

NATHAN, MANNHEIMER, ASCHE,
WINER & FRIEDMAN

By: /s/ Norman Wine

A Member of the Firm
230 Park ~~295 Madison~~ Avenue
New York, New York 10017
(212) 683-1771

IRVING STEINMAN, ESQ.

/s/ Irving Steinman

11 Park Place
New York, New York 10007
(212) 227-4448

COMMITTEE FOR PLAINTIFFS

NOTICE OF APPEAL IN BEHALF OF VAN GEMERT, HENNING, HOUCHINS, PEARLMAN AND CHARIOTT

(Filed December 27, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

WILLIAM R. VAN GEMERT, ALBERT A. HENNING, EDWARD E. HOUCHINS, NATHAN PEARLMAN, ELIAS A. CHARIOTT, CHARLES K. DAVIS, ANDREAL HOLDING CORP., SAMUEL A. WEISS, IRWIN L. ISERT, JACK KIRSCHNER, CHARLES FRIEDMAN, H. MICHAEL ALBERS, ABRAHAM STERN, EDWARD KEMPLER, SIMEON A. SCHLOSS, JR., MARY JANE SCHLOSS SILVERMAN, SIMEON A. SCHLOSS, JR. and MARY JANE SILVERMAN, Trustees under the Last Will and Testament of Floretta Schloss Wile, DAVID M. BOTSFORD, MRS. SAMUEL LEMLER, LOUIS DAVIS, MRS. LEONARD C. DILL, JR., JOSEPH SCHLAGMAN, NATALIE K. WIGLER, ANN LOUISE DIAMOND, SAMUEL CHARDAVOYNE, WILLIAM M. JONES, MR. & MRS. H. DIENMAN, MILTON HART, MARY LEVIN, FRANCES DAVIS, E. JULIAN DAVIS, ROBERT LEMLICH, ARTHUR FRISCH, MARIAN S. MITCHELL, VINCENTE J. BONNARD, HAROLD M. WHITE and MARGARET C. WHITE, MORRIS BERNSTEIN, WALTER L. EATON, ERNEST G. ANGEVINE, ABRAHAM PERCHICK, COMMITTEE FOR THE ESTATE OF MAX SCHNIDER, an incompetent, FRANCIS H. SHOOBE, and ALBERT A. ARDITTI, GERTRUDE McNAUGHT, MRS. J. H. STEIN, JOAN S. BERMAN, J. DAVID STEIN, SARAH E. MORITZ, VIRGINIA W. STAUB, LOUIS BERGLAS, DR. JACK DIENER, DENNIS J. FINN, BERTHA J. WINER, JOANNE W. FINN and S. EDWARD MITTLER, for and in behalf of themselves and for all other holders of THE BOEING COMPANY 4-1/2% Convertible Subordinated Debentures, due July 1, 1980 who are similarly situated,

Plaintiffs,

-against-

THE BOEING COMPANY (formerly BOEING AIRPLANE COMPANY), THE CHASE MANHATTAN BANK, CLAIRMONT L. EGTVEDT, WILLIAM M. ALLEN, EDWARD C. WELLS, JAMES E. PRINCE, LOWELL P. MICKELWAIT, W. L. CAMPBELL, ARTEMUS L. GATES, CRAWFORD H. GREENWALT, WILLIAM G. REED, D. E. SKINNER, THOMAS R. WILCOX, JOHN O. YEASTING and GEORGE H. WEYERHAEUSER,

Defendants.

----------x

66 Civ. 1820

NOTICE OF APPEAL

Notice of Appeal in Behalf of Van Gemert, Henning, Houchins, Pearlman and Chariott

Notice is hereby given that plaintiffs William R. Van Gemert, Albert A. Henning, Edward E. Houchins, Nathan Pearlman and Elias A. Chariott, for and in behalf of themselves and for all other holders of The Boeing Company 4-1/2% Convertible Subordinated Debentures due July 1, 1980 who are similarly situated, hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment, entered in this action on November 30, 1973, and from the Order directing the entry of such judgment, entered in this action on November 29, 1973.

The names of the parties to the judgment, and the names and addresses of their respective attorneys of record, are as follows:

Parties	Attorneys of Record
Defendants The Boeing Company and Thomas R. Wilcox	Davis Polk & Wardwell One Chase Manhattan Plaza New York, New York 10005 Holman, Marion, Perkins, Coie & Stone 1900 Washington Building Seattle, Washington 98101
Defendant The Chase Manhattan Bank	Dewey, Ballantine, Bushby, Palmer & Wood 140 Broadway New York, New York 10005
Committee for the Plaintiffs	Kass, Goodkind, Wechsler & Gerstein 122 East 42nd Street New York, New York 10017 Nathan, Mannheimer, Asche, Winer & Friedman 295 Madison Avenue New York, New York 10017 Irving Steinman, Esq. 11 Park Place New York, New York 10017
Plaintiffs-Appellants	Kass, Goodkind, Wechsler & Gerstein 122 East 42nd Street New York. New York 10017

Notice of Appeal in Behalf of Van Gemert, Henning, Houchins, Pearlman and Charlott

Parties	Attorneys of Record
Plaintiffs Bertha J. Winer and Joanne W. Finn	Nathan, Mannheimer, Asche, Winer & Friedman 295 Madison Avenue New York, New York 10017
Plaintiff Dennis J. Finn	Krystow, Proby, Gay & Snowden 602 City National Bank Bldg. Miami, Florida 33130
Plaintiff Louis Berglas	Irving Steinman, Esq. 11 Park Place New York, New York 10007
Plaintiff Marian S. Mitchell	McClintock, Fulton, Donovan & Waterman 2150 Guardian Building Detroit, Michigan 48226
Plaintiff Dr. Jack Diener	Danzansky & Dickey 1120 Connecticut Avenue N.W. Washington, D.C. 20036
Plaintiffs Gertrude McNaught, Mrs. J. H. Stein, Joan S. Berman, J. David Stein, Sarah E. Moritz and Virginia W. Staub	Elson, Lassers & Wolff 11 South LaSalle Street Chicago, Illinois
Plaintiff S. Edward Mittler	Freedman Borowsky & Lorry Lafayette Building Chestnut Street at Fifth Philadelphia, Pa. 19106
Plaintiff Hanna Adler Hale	Henry S. Hale, Esq. 35 Cornell Drive Great Neck, New York
Plaintiff Henry J. Hoff	Arent, Fox, Kintner, Plotkin & Kahn 100 Federal Bar Bldg. 1815 H Street Washington, D.C.
Plaintiffs Harold M. White, Margaret C. White, Morris Bernstein, Walter L. Eaton, Ernest G. Angevine, Abraham Perchick, Committee for the Estate of Max Schneider, Francis H. Shoobe and Albert A. Arditti	Epstein, Sachnoff & Schrager 105 West Adams Street Chicago, Illinois 60603
Plaintiff Arthur Frisch	Abraham Lillienthal, Esq. 271 Madison Avenue New York, New York

Notice of Appeal in Behalf of Van Gemert, Henning, Houchins, Pearlman and Charlott

December 26, 1973

KASS, GOODKIND, WECHSLER & GERSTEIN

By Michael B. Fuchs
A Member of the Firm

Attorneys for Plaintiffs-Appellants
122 East 42nd Street
New York, New York 10017
(212) 867-8570

UNITED STATES DISTRICT COURT (Filed December 28, 1973)
SOUTHERN DISTRICT OF NEW YORK

WILLIAM R. VAN GEMERT, ALBERT A. HENNING, EDWARD E. HOUCHINS, NATHAN PEARLMAN and ELIAS A. CHARIOTT, for and in behalf of themselves and for all other holders of THE BOEING COMPANY 4-1/2% Convertible Subordinated Debentures due July 1, 1980, who are similarly situated,	
Plaintiffs,	
v.	66 Civ. 1820
THE BOEING COMPANY (formerly BOEING AIRPLANE COMPANY), THE CHASE MANHATTAN BANK, CLAIRMONT L. EGTVEDT, WILLIAM M. ALLEN, EDWARD C. WELLS, JAMES E. PRINCE, LOWELL T. MICKELWAIT, W. L. CAMPBELL, ARTEMUS L. GATES, CRAWFORD H. GREENWALT, WILLIAM G. REED, D. E. SKINNER, THOMAS R. WILCOX, JOHN O. YEASTING and GEORGE H. WEYERHAUSER,	NOTICE OF APPEAL
Defendants.	

Notice is hereby given that the plaintiffs above named, for and in behalf of themselves and for all other holders of The Boeing Company 4-1/2% Convertible Subordinated Debentures due July 1, 1980, who are similarly situated, hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment, entered in this action on November 30, 1973, and the Order directing the entry of such judgment, entered in this action on November 29, 1973.

The names of the parties to the judgment, and the names and addresses of their respective attorneys of record, are as follows:

Notice of Appeal in Van Gemert Unconsolidated Action

PARTIES	ATTORNEYS OF RECORD
Defendants The Boeing Company and Thomas R. Wilcox	Davis Polk & Wardwell One Chase Manhattan Plaza New York, New York 10005
Defendant The Chase Manhattan Bank	Dewey, Ballantine, Bushby, Palmer & Wood 140 Broadway New York, New York 10005
Plaintiffs above named	Kass, Goodkind, Wechsler & Gerstein 122 East 42nd Street New York, New York 10017

December 24, 1973

KASS, GOODKIND, WECHSLER & GERSTEIN

By: Michael B. Fuchs
A Member of the Firm
Attorneys for Plaintiffs
122 East 42nd Street
New York, New York 10017
(212) 867-8570

NOTICE OF APPEAL FILED BY NATHAN, MANNHEIMER, ASCHE WINER & FRIEDMAN (Filed December 28, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM R. VAN GEMERT, et al,

Plaintiffs,

-against-

THE BOEING COMPANY,

Defendant.

66 Civ. 1820

NOTICE OF APPEAL

Notice is hereby given that plaintiffs JOANNE W. FLINN, JACK DIENER, WILLIAM R. VAN GEMERT, ALBERT A. HEMMINS, EDWARD E. HOUCHINS, NATHAN PEARLMAN and ELIAS A. CHARIOTT, individually and in behalf of and for the benefit of all other members of the class, namely, holders of THE BOEING COMPANY 4 1/2% Convertible Subordinated Debentures due July 1, 1980, hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on November 30, 1973.

Dated: New York, New York
December 28, 1973.

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Notice of Appeal Filed by Nathan, Mannheimer, Asche Winer & Friedman

COMMITTEE FOR PLAINTIFFS:

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IRVING STEINMAN, ESQ.
Irving Steinman
(per Norman Winer)
11 Park Place
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TO:

CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVIS POLK & WARDWELL, ESQS.
Attorneys for Defendant,
THE BOEING COMPANY
One Chase Manhattan Plaza
New York, New York 10005

A 202 Affidavit of Personal Service of Papers H LUTZ APPELLATE PRINTERS, INC.

UNITED STATES COURT OF APPEALS:SECOND CIRCUIT

Index No.

WILLIAM R. VAN GEMERT, et al,
Plaintiffs-Appellants,

against

THE BOEING COMPANY, et al,
Defendants-Appellees.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, Victor Ortegá, being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1027 Avenue St. John, Bronx, New York

That on the 5th day of September 1974 at &*

deponent served the annexed Appellants. Appendix upon

*

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein,

Sworn to before me, this 5th day of September 19 74

Victor Ortega
Print name beneath signature

VICTOR ORTEGA

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975

* Nathan, Manheim & Ashe-Attorneys for the Appellees- 230 Park Ave., New York

Davis, Polk & Wardwell- Attorneys for the Appellees-1 Chase Manhattan Plaza, New York

Danzansky, Dickey& Tydings- Attorneys for the Appellees- 230 Park Ave., New York.